

# EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT  
 2 IN AND FOR THE DISTRICT OF DELAWARE  
 3  
 4 CRYSTALLEX INTERNATIONAL CORP., )  
 5 -----Plaintiff, ) Case No.  
 6 vs. ) 17-151-LPS  
 7 BOLIVARIAN REPUBLIC OF )  
 8 VENEZUELA, )  
 9 -----Defendant. )

## 10 TRANSCRIPT OF MOTION TO DISQUALIFY

11 MOTION TO DISQUALIFY had before the  
 12 Honorable Leonard P. Stark, U.S.C.A.J., in  
 13 Courtroom 4A on the 30th of March, 2023.

## 14 APPEARANCES

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 16 BY: MYRON STEELE, ESQ.  
 17 ABRAHAM SCHNEIDER, ESQ.

18 -and-

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 24 Special Master

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1 (Appearances continued.)

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 13 ConocoPhillips

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1 THE COURT: It's nice to see you all

2 and be in court again with you. It's been some  
 3 time, I believe, since we've been in court  
 4 together. I do want to start by having you all  
 5 put your appearances on the record for us, and  
 6 there are so many of you, so please be careful  
 7 as we go through the proceedings today to  
 8 identify yourselves for the court reporter.

9 Right side of the room. We'll start  
 10 there.

11 MR. MOYER: Good morning, Your Honor.  
 12 Jeff Moyer of Richards, Layton, and Finger on  
 13 behalf of Crystalex. Your Honor, I'm joined  
 14 this morning by Miguel Estrada and Lucas  
 15 Townsend of the Gibson Dunn firm.

16 THE COURT: Good morning.

17 MR. STEELE: Good morning, Your  
 18 Honor. May it please the Court. I'm Myron  
 19 Steele from Potter Anderson. I have the  
 20 privilege of representing the special master,  
 21 Robert Pincus, who is here. Also appearing,  
 22 from Weil Gotshal, Ray Schrock, who will  
 23 address the Court; Alex Welch; and Chase  
 24 Bentley. Thank you, Your Honor.

25 THE COURT: That's everyone on that

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1 side of the room, so we'll turn to the other  
 2 side of the room, please.  
 3 MR. CHILDS: Good morning, Your  
 4 Honor. Stephen Childs of Abrams and Bayliss on  
 5 behalf of the Republic. I'm joined this  
 6 morning by my co-counsel from Munger, Tolles,  
 7 and Olson Mr. Donald Verrilli and Ms. Ginger  
 8 Anders, and with Your Honor's permission,  
 9 Mr. Verrilli will address the Court.

10 THE COURT: Permission is granted.  
 11 Good morning to you both.

12 MS. CUMINGS: Good morning, Your  
 13 Honor. Ali Cummings of Morris, Nichols, Arnsht,  
 14 and Tunnell on behalf of PDV Holding and Citgo  
 15 Petroleum, and with me at counsel table is  
 16 Nathan Eimer of Eimer Stahl, and he'll be  
 17 presenting this morning.

18 THE COURT: Thank you for that.

19 MR. HIRZEL: Good morning, Your  
 20 Honor. Sam Hirzel from Heyman Enerio on behalf  
 21 of PDVSA. With me in the back I have Juan  
 22 Perla, Kevin Meehan, and Aubre Dean from the  
 23 Curtis Mallet firm.

24 THE COURT: Welcome to you all. Good  
 25 morning.

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1 MR. MORITZ: Good morning, Your  
 2 Honor. Garrett Moritz from Ross Aronstam on  
 3 behalf of ConocoPhillips. I'm joined today by  
 4 co-counsel from Wachtell Lipton Richard Mason,  
 5 Amy Wolf, and Michael Cassel, and also, from  
 6 Kobre and Kim, Marcus Green. And our  
 7 expectation is Ms. Wolf will be speaking today,  
 8 although if some issue comes up that may  
 9 requires someone else, we may have one of the  
 10 others. Thank you.

11 THE COURT: Anybody else here this  
 12 morning that wants to enter an appearance?  
 13 Thank you.

14 There is one more. Good morning.

15 MS. CREE: Good morning, Your Honor.  
 16 Jennifer Cree from Landis, Rath, and Cobb on  
 17 behalf of the creditor Red Tree. With me today  
 18 I have co-counsel Steven Molo and Justin Ellis  
 19 of MoloLamken.

20 THE COURT: Thank you very much.

21 Again, good morning to all of you.

22 So I want to start by telling you my  
 23 agenda for the morning and then give you all a  
 24 chance to tell me if you have any questions  
 25 about that agenda or any objections or any

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1 suggestions as to another way to proceed.

2 We're principally here on the  
 3 still-pending motion to disqualify the special  
 4 master. I do not need to conduct an  
 5 evidentiary hearing after the extensive  
 6 briefing. That was the position of all  
 7 parties, and I do not believe that there is any  
 8 material factual dispute in the record.

9 But here's how I plan to proceed: I'd  
 10 like to start by hearing from the special  
 11 master, particularly to see if there's anything  
 12 he wants to put on the record to supplement the  
 13 record. One of the issues that particularly  
 14 became apparent in the letters that I ordered  
 15 you all to submit is the Venezuela parties'  
 16 position that they are not seeking my  
 17 disqualification on the assumption that there  
 18 has been no ex parte communication of anything  
 19 substantive that happened in the January 12th

20 meeting and any discussion between me and the  
 21 special master, there has not been. But I do  
 22 want to see if the special master wants to make  
 23 a record on that point and also if he's  
 24 prepared to make any record as to what happened  
 25 at the January 12th meeting in case that became

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1 pertinent to the Venezuela parties' position,  
 2 so my thought is I would start with the special  
 3 master, not necessarily hear argument or ask  
 4 him a lot of questions, but just see if he  
 5 wants to supplement the record then turn to the  
 6 moving parties and hear their argument, and  
 7 I'll certainly have some questions, and then go  
 8 back to the special master, and if he wants to  
 9 make argument at that point, I may have some  
 10 questions related to motion. I would turn to  
 11 him after hearing from the moving parties, and  
 12 then I would give Crystallex a chance to weigh  
 13 in, ConocoPhillips if they wish, and ultimately  
 14 give rebuttal to the moving parties. That was  
 15 my thought.

16 Would there be any objection,  
 17 Mr. Verrilli, or any suggestion as to another  
 18 way to proceed?

19 MR. VERRILLI: No, that sounds ideal.

20 THE COURT: Mr. Schrock, any thoughts  
 21 about that? Any objection?

22 MR. SCHROCK: No objection, Your  
 23 Honor.

24 THE COURT: Anybody else object to  
 25 Mr. Schrock beginning?

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1 Let me tell you about the rest of the  
 2 day. After that -- you can have a seat for a  
 3 minute. After we go through all of that on the  
 4 motion to disqualify, I do want to talk to you  
 5 about whether I should be ordering the billing  
 6 records of the special master to be unsealed.  
 7 I do want to give the Venezuela parties any  
 8 chance to talk about their possible objections  
 9 to the expenditures of the special master, and  
 10 I do want to, before we leave our time together  
 11 today, see what you all think about where this  
 12 case is and how we should proceed and anything  
 13 else that you might wish to raise.

14 So I'll just pause briefly. Any  
 15 questions about that from anybody?

16 No. Okay.

17 All right. Mr. Schrock, we'll have you  
 18 come back and get us started in the manner that  
 19 I've indicated.

20 MR. SCHROCK: Thank you very much,  
 21 Your Honor. Again. Ray Schrock, Weil, Gotshal  
 22 and Manges, for the special master. May it  
 23 please the Court.

24 In terms of supplementing the record, we  
 25 can note for the Court and the parties that

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1 since we were last before the Court, we have  
 2 reached out through counsel to the DOJ to  
 3 solicit guidance and feedback from the U.S.  
 4 government, including OFAC, pursuant to the  
 5 sale procedures order. We did arrange for the  
 6 January 12th meeting, as the Court is aware,  
 7 and we did -- we did attend that meeting.

8 I would note that present at the meeting  
 9 was only the DOJ at that meeting. The U.S.  
 10 government -- in light of the motion, OFAC  
 11 decided not to attend, just, I believe, out of  
 12 an abundance of caution.

13 At the January 12th meeting, the special  
 14 master and his advisors presented materials  
 15 distributed via the DOJ out of the meeting.  
 16 The materials outline the sale process to date  
 17 and the intended timeline of the process going  
 18 forward as well as the benefits of the orderly  
 19 process designed by the special master and  
 20 approved by this Court. The materials also set  
 21 out for the DOJ the elements of the proposed  
 22 sale process, which may need specific U.S.  
 23 government approval, and the importance of  
 24 receiving guidance and clarity on the U.S.  
 25 government's position with respect to the sale

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1 process generally. This is so that prospective  
 2 sale process participants, including potential  
 3 bidders, could make preparations. And,  
 4 frankly, as we always make clear to the Court,  
 5 we need this guidance from OFAC and from the  
 6 U.S. government, in our view, to maximize  
 7 value.

8 We have not yet received the U.S.  
 9 government's position, but we expect to receive  
 10 it on or prior to April 7th. So what's been  
 11 discussed are merely process issues, so we  
 12 don't know what the U.S. government's position  
 13 is.

14 THE COURT: Let me just interrupt  
 15 you. I think April 7th would be the end of the  
 16 six-month window; is that correct?

17 MR. SCHROCK: That's right, Your  
 18 Honor. When we solicited feedback from the  
 19 U.S. government, we said, listen, we'd like to  
 20 hear from you by April 7th. We outlined for  
 21 you the process, all the specifics in the sale  
 22 process order, but we simply don't know what  
 23 their position is at this point.

24 I would note that to the extent we're  
 25 expected to submit the supplemental report by

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1 April 7th, I think in light of the fact that we  
 2 expect to receive some feedback from the U.S.  
 3 government on or prior to that date, it would  
 4 make sense to push out the supplemental report  
 5 date. The back-end date was May 3rd, I  
 6 believe, in the sale procedure order. If we  
 7 could have until the end of the month,  
 8 April 30th, I think that would give us time to,  
 9 one, consider whatever the U.S. government's  
 10 position has been or is with respect to moving  
 11 forward, and I think it will make for a better  
 12 supplemental report for the Court and the  
 13 parties. I think, also, we can interact with  
 14 the sale process parties and, you know, frankly  
 15 solicit some limited feedback as to, you know,  
 16 our thoughts on moving forward before we  
 17 present that to the Court.

18 THE COURT: Is the request to extend  
 19 the deadline to April 30th, is that something  
 20 you've had a chance to talk to the sale  
 21 process --

22 MR. SCHROCK: It's not, Your Honor,  
 23 generally, but we wanted to mention that.

24 THE COURT: I'm sure over the course  
 25 of the morning, we'll find out.

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1 MR. SCHROCK: In terms of  
 2 supplementing the record, Your Honor, I think  
 3 that's really -- for purposes of the instant  
 4 motion, that's all we wanted to note.

10:21AM 5 THE COURT: Of course, as you know,  
 6 we had a very brief conversation. I'm prepared  
 7 to make a quick record on that unless you  
 8 wanted to do it.

9 MR. SCHROCK: No, please go ahead.

10:21AM 10 THE COURT: Let me put this in record  
 11 and you tell me if your recollection was any  
 12 different. You were on that call; correct?

13 MR. SCHROCK: I was.

14 THE COURT: According to my notes and  
 15 recollection, on March 8th, we had a brief  
 16 conversation at the special master's request.  
 17 It was by phone. The special master attended  
 18 and some -- his advisors, including  
 19 Mr. Schrock, myself, and several of my law  
 20 clerks.

21 After introductions, because it had been  
 22 some time since we'd all been in touch, I asked  
 23 the special master to tell me what the agenda  
 24 was, since I had no idea what he was going to  
 10:22AM 25 want to talk about. He said about one

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1 sentence, something to the effect of he  
 2 expected some kind of follow-up with OFAC maybe  
 3 in late February and maybe expected a letter  
 4 but had not yet seen it.

10:22AM 5 At that point, I interrupted and reminded  
 6 everybody on the call that the disqualification  
 7 motion was still pending, that the Venezuela  
 8 parties had noted that they were not seeking my  
 9 disqualification, and that that was in part

10:22AM 10 because they had no reason to believe that I  
 11 had any ex parte communication with the special  
 12 master about what had occurred at the January  
 13 12th meeting. And after reminding everyone of  
 14 that, the discussion turned, pretty much, to

10:22AM 15 whether we should continue the call, and a  
 16 question was asked whether this hearing on  
 17 March 30, which had already been scheduled,  
 18 whether I intended to go forward with it, and I  
 19 indicated I did. And we ended the call, and  
 20 later, I think, that day I got an e-mail from  
 21 the special master indicating that in light of  
 22 all that, he would wait to further communicate  
 23 anything until this hearing.

24 Anything you want to add to that or  
 10:23AM 25 anything I got wrong?

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1 MR. SCHROCK: No, I think that sounds  
 2 like an accurate summary.  
 3 THE COURT: All right. I will give  
 4 you a chance for argument on the motion, but is  
 5 there anything else in the nature of  
 6 supplementing the record you wanted to say at  
 7 this point?

8 MR. SCHROCK: No, Your Honor.

9 THE COURT: Thanks very much.

10:23AM 10 We will turn to the moving parties, and I  
 11 believe Mr. Verrilli is to make argument.

12 Would you start by indicating, do you  
 13 have an objection to an April 30th deadline for  
 14 the supplemental report?

10:23AM 15 MR. VERRILLI: I do not on behalf of  
 16 the Republic. We do not, Venezuela.

17 THE COURT: Thank you very much. You  
 18 may proceed.

19 MR. VERRILLI: Good morning. May it  
 20 please the Court. I'm Don Verrilli for the  
 21 Venezuela parties. I'll focus on the  
 22 disqualification issue and later in the day,  
 23 Mr. Eimer will handle the rest of the issues.

24 On the disqualification issue, we're  
 10:24AM 25 cognizant of what the Court said in its prior

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1 ruling about the special master's ex parte  
 2 meeting with OFAC, which we now learned was  
 3 with DOJ. And I'll address the timeliness and  
 4 waiver questions that came up in this Court's  
 5 order on and that the my friends on the other  
 6 side have raised.

7 I do want to start, though, with what we  
 8 perceive as the core problem here. It does  
 9 relate to, but I don't think was answered by,

10:24AM 10 what we just heard from counsel for the special  
 11 master. And I think if I may, Your Honor, just  
 12 to sort of preface what our understanding of  
 13 the purpose of that meeting and our inference  
 14 about what occurred at that meeting, in  
 10:24AM 15 addition to what was just described by counsel  
 16 for the special master.

17 Our understanding of the purpose of that  
 18 meeting was, in addition to the providing  
 19 information that counsel just described, that

20:25AM 20 the special master would advocate that OFAC  
 21 change its position and give a green light to  
 22 the sale process going forward. In fact, the  
 23 reason for that was an exchange between --  
 24 between the special master and counsel for our  
 10:25AM 25 side in which our understanding was that the

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1 reason the special master gave for not being  
 2 comfortable with the Venezuela parties  
 3 observing the meeting was that the special  
 4 master was going to engage in advocacy and that  
 5 that advocacy would be chilled.

10:25AM 6 We raised that in our papers. The  
 7 special master, counsel for special master,  
 8 said what he said this morning, said what he  
 9 said in his papers. As we read the papers, the  
 10 special master hasn't disagreed that that was  
 11 the purpose of the meeting, and from that,  
 12 we're inferring that that happened at the  
 13 meeting.

10:26AM 14 If that's wrong, then that would change  
 15 the complexion of this motion, certainly, but  
 16 we're proceeding on the assumption that that  
 17 did occur at the meeting, given that it was --  
 18 that we were informed that was the reason that  
 19 we were -- that the special master did not want  
 20 us to observe the meeting and wanted it to be  
 21 ex parte.

22 With that in mind, I think that gets to  
 23 our -- that is, really, our core concern here,  
 24 the idea that the special master would engage  
 10:26AM 25 in advocacy with the executive branch to try to

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10:27AM 1 get it to change its position. In that  
 2 situation, what you have is the special master  
 3 acting in a judicial capacity, engaging in  
 4 activity that we consider to be advocacy that  
 5 is not consistent with the impartial portion of  
 6 the law.

10:27AM 7 THE COURT: So you clearly consider  
 8 it advocacy, but I think that's sort of loading  
 9 the situation. Where is the line between  
 10 advocacy and the Court, through its special  
 11 master, just taking reasonable steps to enforce  
 12 its judgment and execute its judicial duty?  
 13 After all, I mean, you well know I'm acting  
 14 under a mandate from the Third Circuit that I  
 15 need to proceed by. So where is the line  
 16 between advocacy and simply doing my job?

10:27AM 17 MR. VERRILLI: I think that gets to  
 18 the heart of it, Your Honor, and it's precisely  
 19 what I want to address, that very question.

10:28AM 20 Now, we understand that the Court has an  
 21 interest, an important interest, in executing  
 22 its judgment consistent with the requirements  
 23 of the law. But I think the key point here is  
 24 that the OFAC sanctions regime is part of the  
 25 law that applies here, and that law gives the

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10:28AM 1 executive the authority to prioritize foreign  
 2 policy considerations over the enforcement of  
 3 judicial judgments, and we know that the  
 4 executive has done that through a lawful  
 5 exercise of its authority. And we know that,  
 6 as of now, the position of the United States  
 7 expressed to this Court by the Justice  
 8 Department is that, considering that proceeding  
 9 with the sale process could jeopardize the  
 10 foreign policy, of the United States -- maybe  
 11 they'll say something different on April 7th,  
 12 but as of now, that's the position.

10:28AM 13 The other thing we know with respect to  
 14 that exercise is that Crystalex applied to  
 15 OFAC for a license and OFAC denied that  
 16 license. It did it without prejudice so they  
 17 could come back in the future, but those are  
 18 the two things we know, and we know right now  
 19 what the foreign policy of the United States  
 10:28AM 20 is. And so our understanding of the situation  
 21 is when the special master goes to OFAC and  
 22 says, "We want you to approve the sale  
 23 process," if indeed that's what happened, "We  
 24 want you to give Crystalex a license to close  
 10:29AM 25 the sale," if indeed that's what happened, then

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10:29AM 1 what the special master is doing is advocating  
 2 that the executive branch change its foreign  
 3 policy calculus to prioritize enforcement of  
 4 the Court's judgment over the foreign policy  
 5 considerations that would subordinate that.  
 6 And I think it's fine for a party to do that.  
 7 It's fine for Crystalex to do it. We  
 8 understand that, of course.

10:29AM 9 THE COURT: What about for me? Let's  
 10 say, I don't know, on or about April 30th, I  
 11 make a determination that it's time to go  
 12 forward and I say something in effect of it  
 13 would be really nice to know we're not wasting  
 14 our time and it would be nice to know that the  
 10:30AM 15 executive branch is going to let this  
 16 transaction go forward, if in fact we  
 17 ultimately come up with a bidder and I approve  
 18 the bid.

10:30AM 19 As you well know, I've already said my  
 20 interpretation of the sanctions, which is  
 21 governing for now because the Third Circuit  
 22 decided not to look at it, is I can go forward  
 23 up until the last step of sort of consummating  
 24 the transaction.

10:30AM 25 So I if I decide in April or May it's  
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1 time to go forward and it would be really nice  
 2 if the executive branch gave some indication  
 3 that it's a fair process and a reasonable  
 4 bidder that they're going to allow that to  
 5 happen, am I advocating or doing something  
 6 consistent with my judicial role at that point?

7 MR. VERRILLI: I think it would  
 8 depend, Your Honor, on how far that statement  
 9 went. If the statement was it would be helpful  
 10 for the Court to know what DOJ's view is, that  
 11 seems to me on the side of the line that  
 12 doesn't raise an issue. But if the statement  
 13 is we think you've got your priorities wrong  
 14 and we want you to subordinate the foreign  
 15 policy, I do think that's over the line, and  
 16 that's where we think the line is. That's  
 17 trying to address Your Honor's question  
 18 earlier, that that's where we think the line is  
 19 because in that situation, this is a judgment  
 20 that Congress has given to the executive branch  
 21 via OFAC to decide whether foreign policy  
 22 considerations should predominate or  
 23 enforcement of the judgment should predominate.  
 24 And what we understand the special master to  
 25 have done in subject clarification is to have

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1 advocated DOJ that OFAC and the executive  
 2 branch, that it change its priorities.

3 To us, that is not impartial  
 4 administrations or enforcement of the law.  
 5 That is advocacy of a change in executive  
 6 branch policy. That seems, to us, to be  
 7 inconsistent with the judicial function and to  
 8 raise the question of does it provide a  
 9 reasonable grounds to question impartiality.

10 THE COURT: Is the key, then, whether  
 11 the special master or me -- I don't think you  
 12 make a distinction on this point. If it's  
 13 advocacy, the line is the same for him and me?

14 MR. VERRILLI: Yes.

15 THE COURT: Okay. So if he or I ask  
 16 for the executive branch to change foreign  
 17 policy, you would say that crosses the line;  
 18 right?

19 MR. VERRILLI: Yes, and I think  
 20 asking for issuance of a license in particular  
 21 and then asking for DOJ to -- for the executive  
 22 branch, expressed through DOJ, to change its  
 23 view about whether continuation of the sale  
 24 process would jeopardize foreign policy and  
 25 national security interests, that the request

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1 to change either of those things is, for us,  
 2 over the line. That's where we think the line  
 3 is.

4 THE COURT: What if the ask is merely  
 5 please tell us what your position is? Your  
 6 position now -- this is hypothetical. If their  
 7 position now is we're not going to tell you  
 8 what our position is and he or I ask in one  
 9 form or another would you please change that  
 10 position and at least tell us what your  
 11 position is, is that -- that's asking for a  
 12 change. Is that crossing the line?

13 MR. VERRILLI: Putting aside the  
 14 question of whether it's ex parte or on the  
 15 record --

16 THE COURT: It's separate. I  
 17 understand.

18 MR. VERRILLI: -- but the substance  
 19 of that, that does not seem, to me, on the  
 20 wrong side of the line. That seems to be no  
 21 different in substance than what the Court did  
 22 previously when is asked DOJ to enter a  
 23 statement of interest. That's effectively  
 24 doing the same thing, and that gets to the  
 25 point. I think that's the appropriate way to

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1 do it. The Court can ask the DOJ for a  
 2 statement of interest. That seems like an  
 3 appropriate way to do it. That's a recognized,  
 4 on-the-record process to ascertain the views of  
 5 the United States with respect to the questions  
 6 that Your Honor has posed. The other way to do  
 7 it, of course, is for Crystalex to apply for a  
 8 license and have OFAC make a judgment. Those  
 9 are appropriate. They're governed by  
 10 regulations. They're on the record. They're  
 11 transparent. Those are the ways this process  
 12 should unfold.

13 THE COURT: How much of this is due  
 14 to the sanctions? And by that I mean, the fact  
 15 that we're in a post-judgment, we're not  
 16 dealing with merits in the normal sense of how  
 17 we think of it, and Courts always have an  
 18 interest, I think, in effectuating judgments,  
 19 especially ones that have affirmed already.

20 How much -- is that a problem? Is your  
 21 argument that simply -- I'll take your word --  
 22 advocating for enforcement of a judgment is  
 23 itself a problem, or is the problem that it  
 24 implicates foreign policy here and matters left  
 25 to the executive branch?

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1 MR. VERRILLI: We're making a point  
 2 that's specific to the circumstances before the  
 3 Court here, which is you've got OFAC having  
 4 exercised the authority conferred by Congress  
 5 on behalf of the executive branch to block the  
 6 transfer of the assets for foreign policy  
 7 reasons, so it's -- given that step by the  
 8 executive branch, it's -- if the judiciary  
 9 itself, as opposed to a party, were to go to  
 10 the executive branch and say we want you to  
 11 change your position on that, that seems not  
 12 consistent with the judicial role to us. That  
 13 seems like not impartial enforcement and  
 14 administration of the law as entrusted to the  
 15 judicial branch but advocacy that the executive  
 16 branch change the enforcement of the law  
 17 entrusted to it. That seems like a key  
 18 difference to us, and that's our concern.

19 Again, given what we heard this morning,  
 20 I want to be careful. We don't know actually  
 21 exactly what the facts are, but if the facts  
 22 are what we're inferring they are, we think  
 23 that is over the line.

24 THE COURT: I think we'll move on to  
 25 something in a moment. Let me try once more

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1 asking you the way Crystalex wrote it in one  
 2 of their briefs at page 17. What they say is  
 3 taking a position on a fully litigated issue  
 4 cannot create the appearance of partiality  
 5 because that is precisely the role of the  
 6 judiciary. I can read it again if you like.

7 MR. VERRILLI: No, I understand that.

8 THE COURT: What's your response to  
 9 that?

10 MR. VERRILLI: My response to that is  
 11 that the -- try to -- apologize. I may repeat  
 12 something I said a few minutes ago.

13 THE COURT: I've probably done that  
 14 already.

15 MR. VERRILLI: Seems to me that the  
 16 right way to think about -- respectfully, the  
 17 way to think about what the interest of  
 18 judiciary here is, that is has an interest in  
 19 enforcing its judgments in a matter that is  
 20 consistent with applicable law. And I think  
 21 what that statement by Crystalex leaves out of  
 22 the equation is that the OFAC sanctions regime,  
 23 the power that Congress gave the executive  
 24 branch, there is applicable law that applies to  
 25 the process by which this judgment will be

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1 executed.

2 THE COURT: Of course, here, I've  
 3 already decided for purposes of this case how  
 4 those sanctions interact with this case. Some  
 5 other Court may ultimately disagree with that,  
 6 but that's where we are. Does that have any  
 7 implications for whether this is advocacy or  
 8 not?

9 MR. VERRILLI: I don't think so, Your  
 10 Honor. The Court has decided, in the exercise  
 11 of the judicial power, that you read the  
 12 regulations in a certain way and that -- while  
 13 we don't agree with them, you read the  
 14 regulations that way. We're not here to  
 15 contest that today -- to allow the sale process  
 16 to go forward up to the point of consummation  
 17 when a license is needed. You exercised your  
 18 judicial power to come to that view, and that  
 19 view can be implemented in the exercise of your  
 20 judicial power.

21 But that seems to me to be categorically  
 22 different from going to the executive branch  
 23 and saying we want you to exercise your  
 24 executive power differently to remove any  
 25 impediments to our exercise of judicial power.

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1 That's what we are concerned happened here, and  
 2 that's what we think can't happen, consistent  
 3 with the law as we understand it.

4 THE COURT: Unless you have more to  
 5 say on this, I would like to hear your  
 6 position on timeliness. I know your position  
 7 on the timeliness of the motion, but why would  
 8 it be wrong for me to say it was untimely?

9 MR. VERRILLI: A couple of reasons.

10 And I don't want to -- we've made a second  
 11 argument, which I have, on the merits, which I  
 12 haven't spent any time on so far about the ex  
 13 parte fact gathering.

14 THE COURT: And I don't mean to stop  
 15 you from that.

16 MR. VERRILLI: I'll go to timeliness  
 17 now, but for purposes of timeliness, I think  
 18 it's important to separate the two. We can  
 19 have a discussion about the process that led to  
 20 the interchange in January with respect to ex  
 21 parte fact gathering and the timeliness of it.

22 With respect to the advocacy point, I  
 23 think, really, the salient facts are these:  
 24 When the sale process order was being  
 25 contemplated, we raised an objection to the

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10:40AM 1 possibility that the special master's authority  
 2 to interact with OFAC would include advocacy on  
 3 behalf of any party or advocacy for change in  
 4 the applicable legal requirements. The special  
 5 master responded by saying he had no intention  
 6 to engage in advocacy on behalf of any parties.

7 Now, those facts occurred, and any  
 8 reasonable observer, I would think, seeing that  
 9 response to our objection would come to the  
 10 conclusion that the special master had  
 11 foresworn advocacy, and so that was what we  
 12 were operating on, that understanding.

13 Then when this Court issued the sale  
 14 process order, it does have language in it.  
 10:40AM 15 The special master referred to that language,  
 16 but looking at that language, Your Honor, I'm  
 17 going to -- you know well, but I'll quote it if  
 18 I could. This is -- the March 22nd order says  
 19 that the special master shall use best efforts  
 20 to obtain guidance from OFAC expressing OFAC's  
 21 view of the process and the likelihood it will  
 22 issue a specific license for the sale to close.

23 In our judgment, going back to what I  
 24 said earlier, we think there's a categorical  
 10:41AM 25 difference between seeking guidance from OFAC

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1 and engaging in advocacy to OFAC to change its  
 2 position. So we don't think that that language  
 3 from the March order resolved the objection or  
 4 put us on notice that the special master was  
 5 going to engage in advocacy to change OFAC's  
 6 position. We don't think it would be  
 7 reasonable to read it that way or to hold us to  
 8 an understanding of that based on that. With  
 9 respect to the subsequent actions of the  
 10 special master interacting with OFAC, they were  
 11 reported as just providing OFAC with updates  
 12 and status updates, essentially.

13 Then we get to December 30, 2022, and we  
 14 learn for the first time that the special  
 10:41AM 15 master is planning to have a meeting with OFAC.  
 16 That meeting was planned for January 12th. On  
 17 January 3rd, we learn for the first time that  
 18 it is the intention, as we said earlier, as we  
 19 understand it, of the special master to engage  
 20 in advocacy that OFAC change its position. And  
 21 that is why the presence of the Venezuela  
 22 parties as observers would chill the  
 23 discussion. So the first time we think that we  
 24 are in a position to know that the special  
 25 master is planning to do something that we

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1 understood the special master had foresworn  
 2 earlier was January 3rd.

3 Now, we then moved for an order allowing  
 4 us to observe the meeting on January 9th. This  
 5 Court ruled that that motion was untimely, but  
 6 whether that motion was untimely because the  
 7 meeting was just a few days hence is a  
 8 different question from the question of whether  
 9 we made an untimely objection to the -- to what  
 10 we believe would be improper advocacy. Our  
 11 moving papers on that, in that proceeding, made  
 12 very clear that we thought it would violate the  
 13 operable requirements of Section 455 of the  
 14 special master to engage in that advocacy.

10:42AM 15 And given that, I just don't think  
 16 there's a basis for saying that we acted in a  
 17 dilatory way, and certainly no basis for  
 18 thinking that we did anything like what the  
 19 Third Circuit, as we understand it, has said is  
 10:43AM 20 the basis for an untimeliness objection, namely  
 21 engage in strategic behavior. We moved as soon  
 22 as we knew that there was a problem with the  
 23 special master engaging in advocacy. We don't  
 24 think there's a timeliness problem there.

10:43AM 25 And we also said in our papers we don't

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1 think that we can waive -- that an objection to  
 2 that kind of lack of impartiality is not  
 3 something we can waive. We can consent in  
 4 advance to that kind of discussion occurring,  
 5 but we don't think we can engage in waiver by  
 6 inaction, even if we hadn't taken the actions  
 7 we took, which we think should definitely be  
 8 sufficient to preserve that objection.

9 THE COURT: So in the recitation, you  
 10 say we moved as soon as we could, meaning  
 11 January 9th. But you admit you knew  
 12 everything, including to the extent it's fair  
 13 to distinguish between advocacy and ex parte  
 14 meetings, you knew by January 3rd.

10:44AM 15 Now, I understand it's not a lot of time  
 16 between January 3rd and January 9th. My  
 17 problem is the time between January 9th and  
 18 January 11th is even shorter. I give full  
 19 credit to my staff and my law clerk. We moved  
 20 heaven and earth in 48 hours to get briefing on  
 21 your motion and get you a decision on it before  
 22 January 12th, but I think the timeliness  
 23 analysis has to be -- has to factor in how much  
 24 notice you gave to the Court.

10:45AM 25 It's unclear to me, and I guess this is

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10:45AM 1 my question, what a litigant can reasonably  
 2 expect a Court to do with a motion on  
 3 January 9th about a meeting that's been in the  
 4 works for a long time that's 48 to 72 hours  
 5 later when it's a motion that, if credited,  
 6 threatens a process that's been laboriously  
 7 litigated and expensively litigated for five or  
 8 six years. Seems to me, by all rights, I may  
 9 not have even noticed your motion, much less  
 10 entered a briefing schedule and resolved it in  
 11 that limited time frame. So taking six of the  
 12 eight or nine available days seems to me too  
 13 much under these extraordinary circumstances.  
 14 Could you respond to that.

10:46AM 15 MR. VERRILLI: Well, again,  
 16 respectfully, we would disagree, even with  
 17 respect to question of the motion itself, which  
 18 was a motion that the meeting not occur ex  
 19 parte, that we be able to observe. That was  
 20 the motion before the Court, and we very much  
 21 appreciated the Court's effort to resolve that  
 22 motion. We have tried to explain in the papers  
 23 why it was four business days, why it took us  
 24 four business days, given the coordination that  
 25 needed to occur on our side. The Court can

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10:46AM 1 find that problematic if it wants with respect  
 2 to the timeliness of the motion to participate  
 3 in the meeting. But that is a different thing  
 4 than whether the conduct that occurred at the  
 5 meeting is disqualifying. If our surmise is  
 6 correct and our position on the law is correct,  
 7 which we think it is, it's disqualifying.

10:47AM 8 THE COURT: If so, it seems logical  
 9 to me that your January 23rd motion to  
 10 disqualify is even more untimely because it was  
 11 not clear to me -- there was one citation, I  
 12 think, to 455 in the papers relating to the  
 13 meeting, but it was not clear to me that by  
 14 denying your motion relating to the meeting  
 15 that what I was going to end up with was, you  
 16 know, the contention by your side that now I  
 17 have to disqualify the special master and  
 18 potentially myself. So to the extent that was  
 19 not clear -- you may think -- you said it's  
 20 clear. I don't know that it's clear in your  
 21 initial motion. Hypothetically, if you accept  
 22 the assumption that it was not clear in your  
 23 January 9th motion, isn't the January 23rd  
 24 motion even more untimely?

10:47AM 25 MR. VERRILLI: No. Respectfully,  
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10:48AM 1 it's not, and a couple of things, if I could,  
 2 going back to the sequence of the briefing.  
 3 The way the briefing unfolded in that  
 4 compressed period of time there is we filed an  
 5 opening brief, an opening motion, and we were  
 6 trying to be circumspect about what the  
 7 intentions of the special master were with  
 8 respect to advocacy. We mentioned it in the  
 9 opening papers. We were trying to be  
 10 circumspect about it because we didn't want to  
 11 be accusatory in a situation that we thought  
 12 remained somewhat ambiguous, despite the  
 13 conversation that occurred earlier.  
 14 The response of the special master left  
 15 us with a high degree of concern that, in fact,  
 16 the special master planned to engage in the  
 17 kind of advocacy that we thought was  
 18 inappropriate. And I think our reply papers  
 19 were quite clear that we thought it was not  
 20 something that could happen at all, much less  
 21 ex parte, so that's why things unfolded the way  
 22 they did then.  
 23 And I do not -- and, again, Your Honor,  
 24 if this was conduct in which the special master  
 25 should not have engaged, we never consented to

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10:49AM 1 it. And given that we didn't consent to it, we  
 2 can't have waived our objection to it, and I  
 3 just think that's the law of the circuit.  
 4 That's the law generally, that if this is  
 5 disqualifying conduct, then it is something  
 6 that we are entitled to object to on  
 7 January 23rd, so that is our position on waiver  
 8 and timeliness.

10:49AM 9 THE COURT: Okay. Anything else you  
 10 want to --

10:49AM 11 MR. VERRILLI: I'd be happy to wait  
 12 for rebuttal and clarify more then. Thank you.

10:49AM 13 THE COURT: We'll get you back on  
 14 rebuttal. Thank you very much.

10:49AM 15 While it's on my mind, Mr. Eimer, any  
 16 objection to April 30th for the report?

10:49AM 17 MR. EIMER: No, Your Honor, no  
 18 objections for Citgo or PDV Holdings.

10:50AM 19 THE COURT: Anybody else? Anybody  
 20 have objections to April 30th?

21 I'll note for the record no objections,  
 22 so the April 30th granted.

23 Lets get Mr. Schrock on what you just  
 24 heard for the motion to disqualify.

10:50AM 25 MR. SCHROCK: Good morning again,  
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1 Your Honor. Again, Ray Schrock, Weil Gotshal  
 2 on behalf of the special master.  
 3 So I tried to listen very carefully to  
 4 counsel's argument around disqualification, and  
 5 I think what I heard was that if the special  
 6 master were arguing for a change in position,  
 7 that that would be disqualifying conduct. Or  
 8 change in policy. And I can certainly confirm  
 9 for the Court and the parties we're not  
 10 arguing, certainly, for a change in policy or  
 11 to subordinate foreign policy to the Court's  
 12 judgment.

13 At our meeting, in the more than  
 14 23 months since the special master was  
 15 appointed in these cases, we have dutifully  
 16 tried to carry out the direction by this Court,  
 17 which included carrying out the specific  
 18 process that, you know, the Court -- we've  
 19 litigated and now the Court has actually  
 20 approved. And pursuant to the sale process to  
 21 the sale procedures order, we solicited OFAC  
 22 guidance and clarity in a manner that's  
 23 consistent with all of our arguments at -- you  
 24 know, in support of the sale process sale  
 25 procedures order that we needed clarity about

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1 what the U.S. government's position would be.  
 2 That is in no way disqualifying conduct. It is  
 3 completely consistent with everything that  
 4 we've been doing since Mr. Pincus was appointed  
 5 in this matter, and it certainly is not  
 6 inappropriate, and there's no disputed fact  
 7 before the Court on which to disqualify the  
 8 special master.

9 Your Honor, I do think it's relevant that  
 10 you've already -- the Court's already somewhat  
 11 addressed this issue. In the January order, I  
 12 believe in the footnote, you noted that if the  
 13 Court -- to the extent this could even be  
 14 framed as advocacy, and, frankly, I regret that  
 15 we even used that word -- that in trying to  
 16 enforce the Court's order, that is not  
 17 inappropriate conduct. There's been nothing  
 18 new that has been raised here. We don't even  
 19 know the position of the U.S. government. We  
 20 are specifically authorized to have ex parte  
 21 communications, and, frankly, I don't think any  
 22 party could reasonably argue that having those  
 23 ex parte communications does not help further  
 24 the enforcement of the Court's order.

25 I don't think that, you know, we are  
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1 asking even for a change in position as well  
 2 with the U.S. government. We were seeking  
 3 clarity and guidance about what their position  
 4 is. We certainly have a view that the sale  
 5 process would be maximized for the benefit of  
 6 all of the creditors, as well as the Venezuela  
 7 parties, if we had guidance from OFAC and we  
 8 have clarity, as we outlined, for purposes of  
 9 enforcing the Court's order, but I don't  
 10 understand. I don't think there's been any  
 11 record made how that would even be  
 12 inappropriate.

13 We won't -- I won't go through chapter  
 14 and verse how many times we've been authorized  
 15 to communicate ex parte with parties. I don't  
 16 think that is seriously in dispute. But, Your  
 17 Honor, you know, having been involved in this  
 18 matter now for a couple of years, it's clear  
 19 that as we get closer to the possibility of the  
 20 sale process potentially being implemented,  
 21 there's going to be more objection to, you  
 22 know, it moving forward. That has been --  
 23 that's certainly -- you know, we would expect  
 24 that because that's -- you know, I think the  
 25 Venezuela parties would admit they don't want

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1 the process to move forward.  
 2 So we don't begrudge them for making any  
 3 arguments today. We don't call balls and  
 4 strikes. We are trying hard to implement the  
 5 Court's order, but I do think it's noteworthy  
 6 that it's already been decided by the Court.  
 7 There's no disputed factual issue here for the  
 8 Court that would call for the disqualification  
 9 of the special master, and I think that it's --  
 10 I don't really understand this line that  
 11 counsel is trying to draw around advocacy  
 12 versus trying to enforce the Court's order.  
 13 In order to get this guidance, we were  
 14 directed to go get guidance from OFAC. We have  
 15 a view that the process will be enhanced if we  
 16 get clarity and guidance from OFAC. OFAC  
 17 hadn't refused to give guidance in the past,  
 18 but they simply will speak for themselves about  
 19 what their position is. Our job was to get  
 20 that clarity and guidance so we could make an  
 21 informed decision for purposes of the  
 22 supplemental report, decide whether or not to  
 23 recommend to the Court and the parties to  
 24 prepare for the preparation launch date and the  
 25 launch date of the marketing process, and

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10:56AM 1 otherwise move these proceedings forward. We  
 2 have billions of dollars in judgments that are  
 3 unsatisfied and that have been unsatisfied for  
 4 years. There are new judgments that have been  
 5 recently -- conditional writ of attachments,  
 6 writs of attachment, that have been considered  
 7 by the Court, and we simply want to move this  
 8 process forward in a fair and expeditious  
 9 manner.

10:56AM 10 On the waiver issue, Your Honor, I do  
 11 think that we make the point in our papers,  
 12 listen, we believe there was some strategic  
 13 delay around this and bringing this up a mere  
 14 three days before the meeting before the Court,  
 10:57AM 15 we think, is simply too late, and especially  
 16 given that I know personally that these  
 17 meetings with the U.S. government have been  
 18 taking place for, you know, since 2021, and,  
 19 you know, that is that -- since that summer, we  
 20 have always met with the U.S. government on an  
 21 ex parte basis, consistent with the directions  
 22 from this Court.

23 I think the Venezuela parties clearly  
 24 have failed to meet their substantial burden of  
 10:57AM 25 a disqualifying basis. I think that the motion

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10:57AM 1 is untimely. I think the Court's already ruled  
 2 on this issue, and given there's no disputed  
 3 evidentiary fact, I think the motion should be  
 4 denied.

10:57AM 5 THE COURT: Thank you. I've got a  
 6 few questions for you.

7 MR. SCHROCK: Sure.

8 THE COURT: I don't know if I'm going  
 9 to have to draw with clarity the line between  
 10 advocacy and non-advocacy, but I wanted to go  
 11 over some of that a little bit with you as I  
 12 did with Mr. Verrilli.

13 The Venezuela parties write in one of  
 14 their briefs at page ten, they say, "Advocacy  
 15 by a judge to the U.S. government can create  
 16 undue influence and cause separation of powers  
 17 concerns." Of course, they're not suggesting  
 18 that I've done that, but I think they're saying  
 19 perhaps Mr. Pincus has done it, and they want  
 20 to illustrate that I couldn't do that.

21 "Advocacy by a judge to the U.S.  
 22 government can create undue influence and cause  
 23 separation of powers concerns." Do you agree  
 24 with that as a principle but say it's not  
 10:58AM 25 applicable here, or do you disagree with that

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1 as a principle?

2 MR. SCHROCK: I just don't think it's  
 3 applicable here, Your Honor, for purposes of  
 4 this case. Again, we were not arguing for a  
 5 change in foreign policy. We were not arguing  
 6 for a change in priorities. We were not  
 7 arguing that the U.S. government change its  
 8 position. What we were trying to impress upon  
 9 the U.S. government is that we needed guidance,  
 10 and we think that the guidance would be helpful  
 11 in order to allow the sale process to move  
 12 forward. And I don't see how, especially under  
 13 these facts, where the Court's already entered  
 14 an order, we're in the remedy enforcement phase  
 15 of these proceedings, and seeking this guidance  
 16 when you've got these particular facts, I don't  
 17 understand how that would be implicating  
 18 separation of powers issues, but in any event,  
 19 I don't think those are the facts before the  
 20 Court.

21 THE COURT: Here's how the Venezuela  
 22 parties put, I think, the same issue, so it's  
 23 probably the same response. It's in the reply,  
 24 and I recognize you have a former chief justice  
 11:00AM 25 of our Supreme Court on your litigation team,

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1 but they write, "Surely this Court could not  
 2 walk into Delaware Supreme Court and urge them  
 3 to issue an opinion agreeing with Crystalex's  
 4 view of what the Delaware code requires."

11:00AM 5 Again, do you agree with that as a  
 6 principle and say it's not applicable?

7 MR. SCHROCK: I would say it's not  
 8 applicable here, Your Honor. And, again, we --  
 9 I don't think that those are the facts,

10 certainly, before the Court, Your Honor, but  
 11 when a Court is -- I think we've made the case  
 12 pretty persuasively the Court has an inherent  
 13 power to enforce its own judgments. We've laid  
 14 out a process to do that. We believe that  
 15 input from the executive branch is necessary in  
 16 order to maximize value. The Court can either  
 17 decide that that is necessary or that isn't  
 18 necessary, but that certainly wasn't -- those  
 19 aren't the facts before the Court.

11:01AM 20 THE COURT: Are the Venezuela parties  
 21 telling on January 3rd something new was  
 22 disclosed to them, this advocacy point? I'm  
 23 now understanding your position seems to be  
 24 whatever word we used, it was not any change in  
 11:01AM 25 the special master's approach.

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1 MR. SCHROCK: It was not at all.  
 2 And we weren't advocating on behalf of  
 3 any party, and we won't. We were simply  
 4 advocating -- or we were simply -- I'll restate  
 5 this. We were simply making the point that in  
 6 order to have the Court's order enforced, for  
 7 the sale process to move forward, that we  
 8 believed further guidance from the executive  
 9 branch was absolutely critical to do that.

11:02AM 10 THE COURT: I think there was a  
 11 suggestion that we should read into your  
 12 opposition to having the Venezuela parties and  
 13 perhaps other sales parties in the room at the  
 14 meeting on January 12th should indicate that,  
 15 perhaps before the motion but who knows, that  
 16 you did have some sort of intent at some point  
 17 to advocate or do something different than  
 18 you've done in earlier meetings. Otherwise,  
 19 why would you oppose them observing? Could you  
 20 respond to that suggestion.

21 MR. SCHROCK: I think we haven't  
 22 wanted them present at, certainly, at other  
 23 meetings. We thought that particularly here,  
 24 when we're dealing with sensitive issues like,  
 25 you know, getting clarity and guidance from the

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1 executive branch about the proposed sale  
 2 procedure, that it's important that that  
 3 dialogue be allowed to be conducted  
 4 confidentially without having the litigants  
 5 from either side present and kind of weigh in  
 6 because I don't think we get a full and frank  
 7 dialogue around it.

8 Certainly, Your Honor, I won't be  
 9 disclosing anything confidential to say we  
 10 don't know. We do not know what the U.S.  
 11 government's position is at this point. We  
 12 know that they're going to issue guidance, and,  
 13 you know, we'll await when that comes.

14 THE COURT: Okay. Anything else?  
 15 MR. SCHROCK: That's it, Your Honor.

16 THE COURT: Thank you very much.  
 17 We'll hear now from Crystalex.

18 Good morning.

19 MR. ESTRADA: Good morning, Your  
 20 Honor. Miguel Estrada -- for the benefit of  
 21 the court reporter, E-s-t-r-a-d-a -- with  
 22 Gibson, Dunn, and Crutcher in Washington on  
 23 behalf of Crystalex.

24 I will start by saying that someone once  
 25 said that Mark Twain supposedly said that

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1 Wagner's music is not as bad as it sounds, and  
 2 I think we have the flip side here, in that I  
 3 have the greatest admiration for Mr. Verrilli,  
 4 counsel for the Republic, and his extremely  
 5 gifted advocacy, but his mellifluous tone  
 6 cannot hide the unreasonable of his client's  
 7 position on these motions.

8 Let me start with timing. And there's  
 9 this question about what this issue is that the  
 10 Republic and its advocating entities are really  
 11 complaining about, and they shift back and  
 12 forth depending on the convenience of the  
 13 situation, but let's keep firmly in mind that  
 14 the recusal motion is supposedly based on  
 15 Section 455(b)(1) and the assertion that by  
 16 meeting ex parte with OFAC, the special master  
 17 has supposedly acquired knowledge of disputed  
 18 evidentiary facts, and that is the key to the  
 19 recusal motion. And the position of OFAC is a  
 20 disputed evidentiary fact in the action.

21 Now, there are problems on the merits of  
 22 that that I'll get to presently, but for  
 23 purposes of waiver, I think it bears noting two  
 24 things: That the notion that the special  
 25 master was meeting ex parte with OFAC has been

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1 clear for years. It was clear when the draft  
 2 sales order was in front of the Court. It was  
 3 clear when we had an all-day hearing on  
 4 November 8, 2021. It was the subject of  
 5 colloquy. It was told to the Court. The Court  
 6 had a colloquy with Mr. Covney (phonetic)  
 7 which we put in the papers about whether going  
 8 to OFAC was going to be a problem, and the  
 9 response was -- I will emphasize again -- it  
 10 will not give clarity to the market. It's not  
 11 a license. If it's not a license, it's  
 12 worthless. It's a license or bust. But it was  
 13 never it would be unethical for the special  
 14 master to go speak to OFAC or have a  
 15 conversation with OFAC.

16 And in the ensuing years, we have the  
 17 special master submitting reports and bills to  
 18 the Court which we know for a fact Venezuela  
 19 has fly-specked to the last penny in which  
 20 there was disclosed to the Court there had been  
 21 meetings between the special master and OFAC,  
 22 and there was never a peep out of the Republic  
 23 or its satellites saying isn't that unethical,  
 24 isn't that a basis for disqualification.

25 We get to the fire drill earlier this

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1 year, January 9th, on one of the most  
 2 astounding facts about the case on timeliness.  
 3 And I think the smoking gun on how this is just  
 4 tactical behavior on the behalf of the Republic  
 5 is the fact that the Republican satellites came  
 6 to you on an emergency basis to be permitted to  
 7 attend the meeting. Never once did they say to  
 8 Your Honor, "And if the meeting happens without  
 9 our attendance, there will be a basis for  
 10 mandatory disqualification."

11 455(b)(1) is not mentioned at all. You  
 12 can look word by word in their pleadings. Not  
 13 mentioned at all.

14 Now, it is not the case that the  
 15 Republican satellites are in a lack of, like, a  
 16 squadron of talented lawyers. If they cited at  
 17 some level 455(a) for a general proposition of  
 18 due process, it's inconceivable that they have  
 19 not thought of the fact that weeks later they  
 20 would be coming to the Court saying, "A-ha, got  
 21 you now." That is clear evidence of tactical  
 22 behavior on the part of the Republic.

23 And the fact that they could not think of  
 24 mentioning this, their grounds for mandatory  
 25 disqualification that formed the centerpiece of

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1 this motion could not be mentioned then and  
 2 only be sprung on the Court a couple of weeks  
 3 later as if it had never occurred to anybody or  
 4 they just found the statute, it's just  
 5 incredible on its face.

6 THE COURT: There was -- I think  
 7 Mr. Verrilli sort of pre-rebutted that by  
 8 saying they were trying to be circumspect in  
 9 their papers. Any response to that?

10 MR. ESTRADA: Yes, of course. That's  
 11 called forfeiture and waiver. If I'm  
 12 circumspect by not speaking out reasonably,  
 13 that's called forfeiture and waiver. I can be  
 14 as circumspect and respectful as I like, but I  
 15 think you are -- if you are going to stand on  
 16 your rights and say to a Court this is what  
 17 will happen as a consequence of the actions if  
 18 you don't rule in my favor, you are required to  
 19 assert that reasonably and not later when you  
 20 have seen what technical advantage you can get  
 21 out of the first try. That's not how legal  
 22 rulings work.

23 But I think more fundamentally, on the  
 24 merits, the fundamental problem with this  
 25 motion is, first, is that it is based on the

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1 notion that the position of OFAC is a "disputed  
 2 evidentiary fact concerning the proceeding," to  
 3 use the language of 455(b)(1), and that's just  
 4 not so. This Court is not going to rule on  
 5 what the position of OFAC is. The position of  
 6 OFAC is an input, and a legal one, in the  
 7 decision-making by this Honor, by Your Honor.  
 8 I mean, it's not like, you know, was the light  
 9 red or was it green when I ran through it and  
 10 Your Honor was picking up his cleaning across  
 11 the street and is in possession of disputed  
 12 evidentiary facts as to whether the light was  
 13 green or red, or it's not as if OFAC, if it  
 14 were to come through its own attorneys to the  
 15 Court saying this is our position, would be  
 16 subjected to you saying no, I find that's not  
 17 your position. That's not a disputed  
 18 evidentiary fact in the proceeding. It's not  
 19 like you're going to find the opposite of what  
 20 the decision really is. It's a legal input in  
 21 the decision-making. And so the whole  
 22 applicability of 455 and 455(b)(1) and the  
 23 whole notion that the special master is going  
 24 to acquire knowledge over disputed facts is a  
 25 false premise for the entire recusal motion.

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1 Having said that, there's a next fallacy  
 2 in the position, which is that to the extent  
 3 this was an input that had a factual component  
 4 to it, the ship has sailed. DI 453, March 2nd,  
 5 last year, you issued a very lengthy order  
 6 taking into account what every party was saying  
 7 about how the OFAC regime applies to this case,  
 8 and you made clear -- and as we saw it, OFAC  
 9 agreed with you on this -- that the sale  
 10 process would go forward short of a sale, and  
 11 that for prudential reasons, you might delay  
 12 the start of the sales process and seek the  
 13 views of OFAC just to see how the market would  
 14 react. That, again, is not a disputed  
 15 evidentiary fact on anything you found. You  
 16 already made all the findings.

17 And in fact, you say at page 29 of DI 443  
 18 in footnote 22, "OFAC appears to recognize that  
 19 it can make this request. That is to say, they  
 20 do not go forward with the prefatory sales  
 21 process short of a sale, but cannot compel the  
 22 Court to grant it." So these issues have been  
 23 fully adjudicated. They're no longer open.

24 If OFAC were to express the view "I  
 25 rather you wouldn't," it would still be open to

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1 you to say I've already ruled that. I'll go  
 2 forward anyway. I was just trying to get their  
 3 views to see if it would help the market  
 4 process as the special master said it might.  
 5 Again, their legal position is a legal input in  
 6 your decision-making, and in the  
 7 decision-making that you've already ruled on.  
 8 That's point one.

9 The next point is that there is this  
 10 sleight of hand about how anything that the  
 11 special master is doing or anything that may be  
 12 happening is lobbying the executive branch for  
 13 a change in the foreign policy position of the  
 14 United States. That is false, and there's no  
 15 evidence for that.

16 We have two data points on this. We have  
 17 a statement of interest that was admitted to  
 18 Your Honor in the Trump Administration -- I  
 19 think it was July 2020 -- in which the  
 20 administration was very careful to say, "At  
 21 this time we have the following view" while  
 22 telling Your Honor that they did not see a  
 23 legal impediment to you going forward with the  
 24 prefatory steps as you later did.

25 And the second input we have on that is

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1 the denial without prejudice of our license  
 2 application in 2021 where, again, OFAC said,  
 3 and you can go look at the document, again and  
 4 again, "Now, at this time, at this present  
 5 moment, this is our view right now." In fact,  
 6 it went so far as to say "If you come back to  
 7 us in early 2022, we may have a different view  
 8 of these things because we're basing this on  
 9 the fact that there are ongoing talks in Mexico  
 10 City, that it's an especially sensitive time,  
 11 and we're not saying how we're going to rule in  
 12 the future."

13 Significantly, in that same letter, OFAC  
 14 recognizes and reauthorized the prefatory steps  
 15 and expressed no disagreement with it and also  
 16 said the Court has recognized that the ultimate  
 17 blocking of the transaction is something that  
 18 is up to the executive and may require a small  
 19 delay in the sale. Now, this is years later  
 20 now. So the notion that there is some lobbying  
 21 for a change in some established foreign policy  
 22 position, when at present we don't actually  
 23 know who our government actually recognizes as  
 24 the government of Venezuela or if there is a  
 25 government of Venezuela other than the de facto

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1 government of the dictatorship, is sort of  
 2 fallacious on its own terms. There is no  
 3 advocacy for a change. There is, at most, a  
 4 question being asked as to what your current  
 5 position is.

6 THE COURT: I want to make sure I  
 7 understand your position. I recognize that  
 8 it's at least in part that there's no evidence  
 9 that the special master has asked for a change  
 10 in foreign policy or a change in how to handle  
 11 a license request. Should I assume you agree  
 12 that if the special master or I did ask OFAC to  
 13 change foreign policy or please grant a  
 14 license, something to that effect, that you  
 15 agree that would be improper?

16 MR. ESTRADA: No, I don't agree with  
 17 that at all.

18 THE COURT: Help me on that.  
 19 MR. ESTRADA: I think there are two  
 20 points to that. I think Your Honor has agreed  
 21 that OFAC has the legal authority to issue or  
 22 not to issue a license. And OFAC, for its own  
 23 internal consideration, may take foreign policy  
 24 into consideration as to whether the answer on  
 25 the license would be yea or nay. I think for a

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1 Court to say I have a preference for my  
 2 judgments to be executed and, therefore, you  
 3 should, having made the execution of the  
 4 judgment, wait this long, you should weigh your  
 5 policy preferences differently, it's not  
 6 inappropriate at all because I think it's  
 7 appropriate for the Court always to advocate  
 8 for their own institutional interest and the  
 9 importance of their own judgments.

10 Now, it's not the case, as was intimated  
 11 by counsel for the Republic, that it is  
 12 categorically improper for a Court to take a  
 13 view of foreign policy interests that are  
 14 different from those of the executive. I'll  
 15 give you one example. The executive is a  
 16 litigant in the courts of the United States  
 17 every day, and every day or every other day the  
 18 executive will come to the Courts of the United  
 19 States and make some argument based on some  
 20 foreign policy interest, say, for example, to  
 21 take a notable example, *Trump versus Hawaii*,  
 22 when Trump had the so-called Muslim ban. There  
 23 was some question about whether he had some --  
 24 he, the president, had his own foreign policy  
 25 judgment that will delay that. And the Courts

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1 are always there to say, okay, that may be  
 2 correct, but I weigh that in executing my job  
 3 for the value that it is worth. I will not  
 4 defer blindly to it in all circumstances.

11:16AM 5 You have to apply the licensing law,  
 6 which recognizes that the ultimate sale will  
 7 not take place absent the license, but the  
 8 considerations expressed by the executive one  
 9 way or the other are those of a kind the U.S.  
 10 courts see every day in a number of contexts  
 11 and sometimes are weighty and sometimes are not  
 12 weighty. And it's not categorically the case  
 13 that U.S. district judges or appeals judges or  
 14 the U.S. Supreme Court are meant by separation  
 15 of powers to fall to the ground prostrate every  
 16 time there is an executive claim that foreign  
 17 policy would be served by X, Y, or Z. That's  
 18 not the case. So I don't agree with that  
 19 proposition.

11:17AM 20 If the Court is saying there is an  
 21 institutional interest in the enforcement of  
 22 foreign judgments, and you therefore consider  
 23 whether you have -- there would be nothing  
 24 inappropriate with that, I disagree with the  
 11:17AM 25 Republic on that. I don't think they're

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1 correct.

2 More fundamentally, though, I think that  
 3 what we have now here is enforcement of a  
 4 judgment that has already been adjudicated by  
 5 this Court, and, you know, the irony of this  
 6 situation is that we have an attachment, which  
 7 is a species of a property right, and the  
 8 Republic is acting as if they have a property  
 9 right in the continuance in the foreign policy  
 10 views that were expressed years ago, and if --  
 11 property right in blocking everybody from  
 12 finding out whether that same view subsists  
 13 today.

14 And to be in the room like the cousin  
 11:18AM 15 from *The Godfather* who was brought from Italy.  
 16 He glared down the civil servants who have to  
 17 meet with the special master who say two years  
 18 ago your foreign policy said that, the U.S.  
 19 government is perfectly capable of speaking  
 20 through its own mouth. It doesn't need tin-pot  
 21 dictators in other countries, it doesn't need  
 22 foreign countries to say what the foreign  
 23 policy of the United States is. The executive  
 24 branch speaks as to what its interest are every  
 11:19AM 25 day in federal courts. If the special master

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1 were to have a conversation with OFAC or DOJ or  
 2 whoever the case may be in which -- which  
 3 caused the special master to make a  
 4 recommendation to the Court that the executive  
 5 felt was not in accord with what happened,  
 6 everybody can be assured that there would be a  
 7 filing with the Court saying that's not our  
 8 position. The executive has whatever position  
 9 it will have. And as I said, it's not a fact  
 10 to be adjudicated. It is what it is, and the  
 11 Court will give it whatever legal weight it has  
 12 in the legal analysis.

13 But it's not up for grabs for  
 14 adjudication. It's not a disputed fact. To  
 11:19AM 15 the extent disputed facts were relevant, they  
 16 were long ago adjudicated, and all that  
 17 remains, as the Third Circuit, said is  
 18 executing the judgment.

19 Under the theory of this motion, if you  
 11:19AM 20 were to go to the U.S. government and you said,  
 21 quoting the Third Circuit, that every day  
 22 Crystalex is not paid is an affront to the  
 23 justice system, that doesn't mean that you  
 24 should be recused and the Third Circuit be  
 11:20AM 25 recused because God forbid they're expressing a

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1 view that's somehow hectoring the executive  
 2 branch into the notion that the judgments of  
 3 our courts are not optional and that they  
 4 should be obeyed. And that is not the law, has  
 5 never been the law, and it is, frankly, an  
 6 absurd conception of how 455, the canons, work  
 7 and how the enforcement of the judgment work.

8 And I think I pretty much covered the  
 9 subject of the motion, but I'm open to  
 11:20AM 10 questions.

11 THE COURT: Just one last. On the  
 12 waiver, to the extent you see it as you do, as  
 13 a separate ground from timing, *per se*, help me  
 14 out on how I can say their right to seek  
 11:20AM 15 disqualification is waived since their argument  
 16 seems to be, basically, you can never waive  
 17 that. A judge or a special master might do  
 18 something that mandates their disqualification.

19 MR. ESTRADA: That are two aspects to  
 20 that, and one of them is the waiver. They  
 21 affirmatively agreed to that process in the  
 22 context of the adoption and then the execution  
 23 of the sales order up until January, so that's  
 24 waiver in the old common law sense, the  
 11:21AM 25 affirmative embracement of that course of

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1 conduct.

2 I think the point they're making, and  
3 this is why I started with 455(b)(1), is that  
4 the acquisition of knowledge of disputed  
5 evidentiary facts is a non-waivable basis for  
6 disqualification. As we pointed out in our  
7 papers, that doesn't mean the timing of the  
8 motion and the fact that it is revealed to be  
9 tactical is not relevant on whether you have  
10 asserted your rights on a timely basis. Now, I  
11 covered already why this is not a disputed fact  
12 and it fails on the merits, but on the timing  
13 it seems to me it would be impossible to  
14 conclude, based on the conduct of the Republic  
15 since this was in draft form, through the  
16 submission of the master of all the bills, and  
17 then the fact that they filed a motion in early  
18 January in which they could not be bothered to  
19 cite the same statute which they were going to  
20 cite two weeks later, that this is not tactical  
21 conduct. And I think tactical conduct does  
22 bear on the timeliness question that is  
23 separate from waiver.

24 They may not have agreed, in fact, they  
25 might have the affirmative intention of not

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1 agreeing and using this as a tactical weapon,  
2 but the Courts are not -- are not required  
3 merely -- merely because they have no  
4 subjective intention in January to agree to  
5 this to accept that they didn't have a tactical  
6 reason in playing this sort of game with the  
7 Court and in holding the motion untimely on  
8 that basis.

9 The lack of timeliness, seems to me, has  
10 nothing to do whether they consciously agreed  
11 to this course of action, which I think they  
12 did earlier and throughout, but if they were  
13 saving this as a weapon in reserve. They had  
14 it in the back pocket, which seems to me  
15 clearly tactical behavior that is relevant to  
16 the timing of the motion because it is beggars  
17 comprehension how a fleet of the most expensive  
18 lawyers in the United States other than me  
19 could have failed to think that this subsection  
20 of the statute would be useful to cite in  
21 January 9th as something the Court should  
22 consider. And the conclusion is unavoidable  
23 that it was purely tactical behavior on the  
24 part of the Republic, as Venezuela has always  
25 tried to do to throw sand in the gears of the

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1 enforcement process.

2 THE COURT: Does ConocoPhillips wish  
3 to be heard?

4 MS. WOLF: Very briefly, Your Honor.

5 THE COURT: Good morning.  
6 MS. WOLF: Good morning. Amy Wolf  
7 from Wachtell, Lipton, Rosen, and Katz on  
8 behalf of ConocoPhillips.

9 Your Honor, we submitted a letter. We  
10 think that the motion merely -- no disrespect  
11 intended -- has no merit. The special master  
12 was charged with the mandate of devising a plan  
13 to sell the shares, to sell the PDVH shares.

14 That's his job, and he was also given  
15 permission and the mandate to collectively  
16 engage with the executive branch. That's all  
17 that's happened here. Framing this as somehow  
18 the special master thinking that he could  
19 convince the federal government to change its  
20 foreign policy it seems to me to be rather a  
21 stretch to try to frame what he has done as  
22 trying to get the United States to change its  
23 foreign policy. His job is to try to get the  
24 sale to happen, and he's allowed to talk to the  
25 executive branch to do that.

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1 And I similarly can't understand how he  
2 could be disqualified for doing his job.

3 THE COURT: Okay. Thank you very  
4 much.

5 Mr. Verrilli.

6 MR. VERRILLI: Thank you, Your Honor.  
7 There are four points I'd like to make. The  
8 first one goes to the question that you and  
9 Mr. Estrada were discussing about timeliness,  
10 waiver, sandbagging, et cetera. Mr. Estrada is  
11 a superb lawyer, and he's a good friend.

12 THE COURT: Apparently expensive too.

13 MR. VERRILLI: And more expensive  
14 than me. And he's often right, but he just has  
15 the basic facts wrong with regard to what  
16 happened in the briefing of the timeliness  
17 motion, and with Your Honor's indulgence, I'm  
18 going to read the sentences from the motion --  
19 from the response to the special master and  
20 from our reply.

21 In our opening motion on page seven,  
22 after we first discussed what would be  
23 455(b)(1), as Mr. Estrada says, we then said --  
24 this is where we were trying to be circumspect.  
25 We were circumspect but not unclear. We said,

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1 "Indeed, it obviously would be improper for the  
 2 special master to contact OFAC unilaterally to  
 3 urge that the government take any position on  
 4 way or the other, particularly on an ex parte  
 5 basis." We cite a number of authorities, and  
 6 then we cite 28 U.S.C. 455(a) and we quote it.

7 Then in response, the special master  
 8 said -- and this is what gave us particular  
 9 cause for concern -- and this is at page five  
 10 of the special master's response, that "It is  
 11 undeniable that the mere presence of the  
 12 Venezuela parties would influence the  
 13 discussions and would undermine the core  
 14 purpose of the meeting, namely, to solicit  
 15 OFAC's unencumbered views on the sales process,  
 16 hear the special master's perspective on why  
 17 OFAC cooperation with the Court's order is  
 18 appropriate and necessary." And then it goes  
 19 on.

20 That's what the special master said he  
 21 was doing and it's why he said we needed to be  
 22 excluded from the meeting, because we would, in  
 23 the words of the special master this morning,  
 24 it would discourage full and frank conversation  
 25 between the special master and the executive

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1 branch on the question of why OFAC cooperation  
 2 with the Court's order is appropriate and  
 3 necessary.

4 Then in our reply, and this is on page  
 5 seven of the reply, we say that the special  
 6 master does not respond to the Venezuela  
 7 parties' authority, establishing that it would  
 8 be a violation of judicial ethics and grounds  
 9 for disqualification if the special master were  
 10 to advocate for OFAC to take a particular  
 11 position, other than to compound the problem by  
 12 admitting an advocacy plan and engaging in such  
 13 advocacy and wrongly claiming that this Court  
 14 has already authorized him to engage.

15 We specifically raised 455(a). We  
 16 specifically said that the conduct about which  
 17 we were complaining is a ground for  
 18 disqualification in that motion. It's  
 19 something we held in reserve.

20 THE COURT: Any reference to 455(b)?  
 21 MR. VERRILLI: Yes. We also  
 22 discussed 455(b)(1) because we made two  
 23 arguments. 455(b)(1) is about the extra-record  
 24 fact gathering. 455(a) is about the items.

25 THE COURT: But there is a citation  
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1 to 455(b), you're saying?

2 MR. VERRILLI: Yes, but here 455(a)  
 3 is what we're saying.

4 THE COURT: I got that. And you said  
 5 you quoted (a) if I got you correctly in your  
 6 initial motion. I'm asking where's the  
 7 citation to (b).

8 MR. VERRILLI: We also cited (b) in  
 9 the motion multiple times, and we cited (a)  
 10 multiple times in reply.

11 With respect to the specifics here, the  
 12 idea that we were holding something in our  
 13 pockets is completely wrong. We said it would  
 14 be grounds for disqualification in the papers  
 15 we filed once it was clear to us that the  
 16 special master was indeed asserting he was  
 17 going to advocate in the matter that we thought  
 18 was inappropriate. We did that. It's clear  
 19 and unambiguous. It's right there on the page.

20 That gets to a broader problem here,  
 21 which is we're having the discussions we're  
 22 having because these things occurred ex parte,  
 23 and that's what we objected to, of course, was  
 24 them occurring ex parte. We understood that  
 25 the special master was going to engage with

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1 OFAC. Of course we understood that. But we  
 2 didn't understand that the special master was  
 3 going to engage in OFAC ex parte at all, and  
 4 that's when we tried to document that in our  
 5 papers until we got definitive word December  
 6 30th that was going to happen.

7 That's the difference. The special  
 8 master's papers themselves acknowledge that the  
 9 sales process order doesn't authorize ex parte  
 10 communication. It authorizes communication.

11 The question of whether that would be ex parte  
 12 was not discussed or described, and the things  
 13 that we supposedly consented to were in the  
 14 special master's reports where he says he's  
 15 providing updates to OFAC about the status of  
 16 the development of the sale process. That's  
 17 it.

18 And I do think, if I may just step back,  
 19 again, there's unclarity about the facts here,  
 20 and I recognize that, so I'm trying to be  
 21 careful. But the idea that a judicial officer  
 22 could go into the executive branch and have a  
 23 secret meeting -- that's what an ex parte  
 24 communication is, a secret meeting -- and urge  
 25 the executive branch to change its position on

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1 OFAC sanctions and then that could be perceived  
 2 as something that is consistent with the  
 3 judicial role just seems completely wrong.  
 4 It's a secret meeting.

11:31AM 5 And I guess the problem we're having here  
 6 is we don't know -- precisely because this was  
 7 ex parte, we don't know what was said at that  
 8 meeting. The -- of course, I take counsel for  
 9 the special master at his word here, but what  
 11:31AM 10 he said, if you'll bear with me -- at one  
 11 point, he said that they wanted to give  
 12 guidance that would allow the process to move  
 13 forward. If you marry that up with what --  
 14 with the quote I read from their papers filed  
 11:31AM 15 in January, there's reason to think that what  
 16 they did is going to say you need to prioritize  
 17 enforcement of this judgment, and that -- to do  
 18 that at all, as I said, we think is on the  
 19 wrong side of the line. To do it ex parte --  
 11:32AM 20 and the discussion we're having here today  
 21 demonstrates why that's such a problem because  
 22 we don't know what happened in that meeting.  
 23 And my friend Mr. Estrada says it's  
 24 perfectly fine for the judicial branch to  
 11:32AM 25 advocate in that way. I'll say a couple of

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1 things about that if I could.

2 The first is that they don't cite any  
 3 example ever of anyone doing it with respect to  
 4 asking the federal government to lift sanctions  
 11:32AM 5 to allow a judicial order to be enforced, any  
 6 judicial officer ever doing it. They don't  
 7 cite a single example, and they certainly don't  
 8 cite any case providing any support for the  
 9 proposition that that would be appropriate  
 11:32AM 10 exercise of judicial power.

11 Instead, what Mr. Estrada said was Courts  
 12 all the time hear about foreign policy and they  
 13 don't have to assume a prostrate position with  
 14 respect to the executive, and that's true, of  
 11:33AM 15 course, in the exercise of the judicial power.  
 16 But we're not talking about that here. What  
 17 we're talking about is an effort to influence  
 18 the exercise of the executive power. Congress  
 19 gave this power to the executive, and it's just  
 20 undeniably advocacy to the executive that it  
 21 change its position. That's what it was. If  
 22 we're indeed correct in our assumption, that's  
 23 what it was.

24 And the last point I'd make in terms of  
 11:33AM 25 all the discussion we've had about frustration

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1 over delay, the delay is because of the  
 2 executive branch at this point. They -- it's  
 3 the executive branch that's not given its okay  
 4 for this process to go forward. It certainly  
 5 hasn't given license to Crystallex to allow the  
 6 deal to be consummated. Maybe they'll change  
 7 their position on April 7th, and if they do,  
 8 the parties can adjust to that. But that's the  
 9 essence of the problem here.

11:33AM 10 I do want to say we did not -- just to  
 11 conclude, a step like the one we've taken in  
 12 this motion is not one that we would take  
 13 lightly, but we really genuinely and deeply  
 14 believe that if indeed that type of advocacy  
 11:34AM 15 occurred, it's not right. It's just not right.  
 16 It's not what a Court should be doing, and  
 17 that's why we filed the motion, and that's why  
 18 we made the arguments we have made.

19 THE COURT: I certainly take you at  
 11:34AM 20 your word as well, and I know you didn't file  
 21 it lightly and you think it's a serious issue.  
 22 It does seem to be clear on the record, though,  
 23 and I don't think your side has been shy about  
 24 it, that you have a position that you do not  
 11:34AM 25 want this to go forward. You want the

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1 position -- the statement of interest from 2020  
 2 to be maintained. You want the licenses to  
 3 continue being denied. Those things are clear  
 4 on the record. I'm asking as a question for  
 5 you to confirm that. And seems to me I can't  
 6 ignore that and it's for me to decide if that  
 7 has any impact on how to resolve the motion.  
 8 Your response.

9 MR. VERRILLI: Of course, that's  
 11:35AM 10 true, Your Honor. As I think Your Honor knows,  
 11 we believe there's still unresolved legal  
 12 questions with respect to the underlying order  
 13 that the Third Circuit presumably has to  
 14 resolve at some point. Our interests are in  
 11:35AM 15 alignment with the foreign policy judgments of  
 16 the United States, but that's because, as we  
 17 see it, the United States understands, as we  
 18 do, the damage that could be done to the  
 19 prospect of the government in Venezuela if  
 11:35AM 20 Citgo and its shares are cannibalized. Yes,  
 21 that's our position, of course.

22 We would hope that the fact that the  
 23 United States, through two administrations now  
 24 so far, is agreeing with the legitimacy of that  
 11:36AM 25 view, that that should have some effect on Your

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1 Honor's thinking about the position we've  
 2 taken.

3 THE COURT: I will give the other  
 4 parties a brief chance to add anything they  
 5 like and then you'll have the last word if they have  
 6 anything to say.

7 MR. VERRILLI: Thank you.

8 THE COURT: Mr. Schrock, anything you  
 9 want to add on this motion?

10 MR. SCHROCK: Just very briefly.

11 Again, Ray Schrock from Weil, Gotshal, and  
 12 Manges for the special master.

13 Your Honor, just one correction. I was  
 14 notified by special master's OFAC counsel that  
 15 present at that meeting were not just the DOJ  
 16 attorneys but also Treasury and State were also  
 17 present but not OFAC, so I wasn't aware of  
 18 that. I wanted to clarify that.

19 And, Your Honor, I do want to make sure  
 20 we're clear to distinguish for -- we're using  
 21 this word of "advocacy." The special master  
 22 does have a view on what we need from OFAC in  
 23 order to have a value-maximizing process. We  
 24 need, you know, FAQs, as we said on the record.

25 We need the ability to give guidance of when

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1 the executive branch would consider granting  
 2 licenses, and those are views that we have.  
 3 And it's perfectly appropriate for -- and  
 4 consistent with the mandate that we've had.  
 5 We've always had those views with OFAC. Did we  
 6 make those clear in the January 12th meeting?  
 7 Yes. Did we make them clear in prior meetings?  
 8 Yes. Did we tell parties previously that, of  
 9 course, we have views around how this process  
 10 should proceed? Yes. Have we put that on the  
 11 record? Yes.

12 But we weren't advocating for a policy  
 13 change. As far as I recall, the executive  
 14 branch hasn't said anything in response to the  
 15 Court's orders around the sale of anything of  
 16 substance. That's what we really needed, was  
 17 some guidance from them to take a position so  
 18 at least we know and can move forward on an  
 19 informed basis, and we think that's perfectly  
 20 appropriate and consistent with the inherent  
 21 power of the Court to enforce its own orders.

22 Your Honor, we haven't done anything  
 23 different than we have done previously. We are  
 24 being fair, open, and we're always attempting  
 25 to be fair to all parties. We're not

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1 advocating on behalf of any party, but we  
 2 certainly have a position about what we think  
 3 is necessary from the U.S. government in order  
 4 to allow the Court's order to be implemented,  
 5 and we think that's consistent with our mandate  
 6 as well as see any separation of powers issues  
 7 or any other problems with doing that. And we  
 8 certainly don't think that knowledge gained  
 9 during that is a disputed evidentiary fact, in  
 10 just performing the role of a judicial officer.

11 That's all we have.

12 THE COURT: Mr. Estrada, anything  
 13 you'd like to add?

14 MR. ESTRADA: A couple of things,  
 15 Your Honor.

16 Just to clarify, our position is, and we  
 17 are correct, that before the meeting occurred,  
 18 the Venezuela parties did not file any request  
 19 for relief from this Court that was based on  
 20 455(b)(1). And you can search all day their  
 21 motion to this Court to be permitted to attend  
 22 the meeting for citation to 455(b)(1) and I  
 23 don't believe you'll find it. So I believe  
 24 when counsel was referring to the citation of  
 25 that provision, he was actually referring to

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1 the current motion that he says he was raising  
 2 with circumspection, not to the point I made  
 3 about the tactical behavior that this would be  
 4 dawning on them a couple of weeks later after  
 5 filing the motion.

6 The second point I'll make is there's  
 7 amoeba-like nature to the arguments here. When  
 8 you talk about timeliness, we keep point out  
 9 that the the ex parte contacts with the  
 10 government by the special master have been  
 11 plain on the record for a very long time, and  
 12 that therefore, to the extent the motion is  
 13 based as it is on the fact that the special  
 14 master has acquired knowledge ex parte of  
 15 disputed evidentiary facts, that's waived and  
 16 untimely.

17 Every time the issue gets asked  
 18 point-blank, they shift to this question of  
 19 advocacy and when they learned that and whether  
 20 that's the issue, but that's not really any of  
 21 the statutory provisions that they're citing.

22 The statutory provisions they're citing are  
 23 based on the acquisition of disputed  
 24 evidentiary facts by the ex parte nature of the  
 25 hearing, so let's not confuse what their

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1 complaint actually is.

2 On the advocacy point, I think we have  
3 said what we have said, which is that the Court  
4 has institutional interest. The Court  
5 ultimately recognizes that OFAC will rule yea  
6 or nay on the sale and whatever consideration  
7 OFAC may take into consideration on that, which  
8 may include foreign policy, are not beyond the  
9 ken of the Court to address as it does in other  
10 cases.

11 THE COURT: Thank you very much.

12 Special master, anything?

13 MR. SCHROCK: No, Your Honor. Thank  
14 you.

15 THE COURT: Mr. Verrilli, you can  
16 have the last word on this motion.

17 MR. VERRILLI: Just to make sure  
18 we're clear about the citations to 455, I think  
19 it's not open to dispute, if one reads our  
20 opening and reply papers, that they make two  
21 points. The first one is that the special  
22 master is engaged in ex parte gathering of  
23 extra-record information, and the second is the  
24 advocacy point, and they're separate. They're  
25 made in both the opening and in the reply.

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1 I take it that in terms of the idea and  
2 thought that this is strategic behavior on our  
3 part, that my friends on the other side are  
4 suggesting that we held something back. Both  
5 arguments are right there in the papers both  
6 times, and I had thought my friend in the  
7 opening argument was saying that thing we held  
8 back was the advocacy argument, but I hope I've  
9 demonstrated to Your Honor that that's clearly  
10 not the case from what I read before.

11 And then with respect to holding back the  
12 argument about extra-record judicial facts,  
13 again, the papers will speak for themselves.  
14 Your Honor can make a judgment about that, but  
15 it's right there in black and white.

16 THE COURT: Thank you very much. So  
17 I will have something more to say about the  
18 disqualification motion sometime today, but  
19 right now I've got nothing else to say on it.  
20 I've heard the arguments. They're very  
21 helpful, very thorough. I'm taking it under  
22 advisement, maybe just a little while, but I'm  
23 taking under advisement a little while.

24 But I do want to come to the other issues  
25 I asked you to be prepared to address. I'll

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1 just run through these in the order that I  
2 think I had listed them.

3 First, whether to unseal the billing  
4 records of the special master. We'll hear if  
5 the special master has any objection to that.

6 MR. SCHROCK: Your Honor, Ray  
7 Schrock, Weil Gotshal, for the special master.  
8 Fundamentally, we don't have any issue  
9 unsealing the fee records. We'll always -- we  
10 may have to redact them for privilege in  
11 certain circumstances, but we're fine if the  
12 billing records are public. No issues.

13 THE COURT: Okay. Anybody on  
14 Mr. Schrock's side of the room have any  
15 objection to that?

16 THE ATTORNEY: No, Your Honor.

17 THE COURT: Okay. Any objection from  
18 the other side of the room?

19 MR. EIMER: Nate Eimer for the  
20 Venezuela parties on this one. We have no  
21 objection to the unsealing of the records.

22 THE COURT: This was, as you may have  
23 gathered, a further inquiry from a media  
24 representative. I think after we found out  
25 there was no objection to the first request, we

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1 then got a second request, so now that I  
2 understand there's no objection, I'm going to  
3 order you in a timely fashion to go ahead and  
4 unseal the billing records. You may make  
5 proper redactions. And going forward, to the  
6 extent there are additional bills, do the same  
7 thing in terms of making public at least a  
8 redacted version. Understood?

9 MR. SCHROCK: Will do Your Honor.

10 THE COURT: We'll turn to probably  
11 Mr. Eimer, but the next issue is the objections  
12 to the ongoing expenditures. I recognize  
13 there's still a motion to quash, but on the  
14 assumption that he's going to continue to spend  
15 money, I know we've gotten into this pattern of  
16 you write the letter and you don't seek further  
17 briefing, but is there something else you would  
18 like me to do? Do you have any requests for  
19 relief at this point?

20 MR. EIMER: No. I think Your Honor  
21 denied, I think, our objections initially to  
22 exceeding the \$2 million cap, and we've just  
23 continued the objection just to preserve it.  
24 That's why we didn't ask for any further  
25 briefing, so I think we're just trying to

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11:45AM 1 preserve, and we can stop trying to preserve it  
 2 if Your Honor acknowledges that, that we're  
 3 just continuing the objection to exceeding the  
 4 \$2 million cap at that point. Your Honor is  
 5 approving that as we go forward, if we have  
 6 specific objections to new petitions, we will  
 7 make those, and we did with respect to the  
 8 January 12th meeting, but that will rise or  
 9 fall with Your Honor's ruling on  
 10 disqualification. I think that's where we are  
 11 on the fees.

11:46AM 12 THE COURT: I don't want to do  
 13 anything that makes you think you're incurring  
 14 any greater risk of being found to have waived  
 15 an objection. In my new life, I hear a lot of  
 16 arguments now about whether things are  
 17 preserved or not. I'm content if you want to  
 18 continue to do what you've done. If there's a  
 19 way to short-circuit that, I'm also prepared to  
 20 say for the record that you have a standing  
 21 objection to every bill that comes in from this  
 22 point forward and you'll only write me a letter  
 23 if you see something that's really new, but so  
 24 doing is not a problem for me. So any response  
 11:46AM 25 to that?

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11:46AM 1 MR. EIMER: I think I'm fine with a  
 2 standing objection going forward. If there's  
 3 something specific we need to object to, we  
 4 will and raise that with Your Honor, as we did  
 5 with respect to the fees regarding the  
 6 January 12th meeting. I think that's fine as  
 7 long as the other parties are content with our  
 8 standing objection being preserved to the fees.

11:47AM 9 THE COURT: We're going to find out  
 10 now. Thank you.

11:47AM 11 Mr. Schrock.

11:47AM 12 MR. SCHROCK: Your Honor, if  
 13 Mr. Eimer wants to have a standing objection, I  
 14 suppose that's fine. I would like to note for  
 15 the record, of course, that, consistent with  
 16 the Court's order, the \$2 million cap only  
 17 applied to getting to the initial work for the  
 18 special master. If there are other objections  
 19 that they have, certainly, we'd like to hear  
 20 them, you know, if there are other substantive  
 21 issues that they have, and they can certainly  
 22 make those at that time. With regard to that  
 23 if it's the standing \$2 million  
 24 exceeding-the-cap issue, that sounds fine to  
 11:47AM 25 me.

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11:48AM 1 THE COURT: That's fine. Let me be  
 2 clear and talk with the other process parties.  
 3 Mr. Estrada, any position on that?  
 4 MR. ESTRADA: We don't have any  
 5 position on the objections that the Venezuela  
 6 parties have. You will not be surprised to  
 7 learn that my client, like any client, doesn't  
 8 like to pay large bills if they're unnecessary,  
 9 though I will note that the bills might be  
 10 lower if the Venezuela parties would cease  
 11 filing all these motions that have no merit.

11:48AM 12 THE COURT: Thank you.  
 13 And Ms. Wolf for Conoco?

11:48AM 14 MS. WOLF: I second Mr. Estrada's  
 15 point that we're all spending a lot of money  
 16 because of a lot of motions being made by the  
 17 Venezuela parties. With that said, in terms of  
 18 their having a standing objection on the \$2  
 19 million cap, we, of course, have no problem  
 11:48AM 20 with that.

11:48AM 21 THE COURT: Mr. Elmer, anything you  
 22 want to add in light of all of that?

11:48AM 23 MR. EIMER: No, Your Honor. We're  
 24 fine.

11:48AM 25 THE COURT: All right. The next on

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11:49AM 1 my list is a status report and how to proceed.  
 2 Mr. Schrock, I know you're at the podium.  
 3 I know we've covered a lot, but if there are  
 4 other things you think we have to cover or any  
 5 requests for what I should be doing or anything  
 6 else, now would be the time to put that out  
 7 there.

11:49AM 8 THE ATTORNEY: Thanks, Your Honor. I  
 9 think that we have covered, I think, ad nauseam  
 10 the meeting from January 12th, and that was  
 11 certainly part of the update. We are in the  
 12 process of doing the initial steps to prepare  
 13 the supplemental report consistent with the  
 14 sale procedures order, and to do that, we've  
 15 activated Evercore because some of the issues  
 16 that bear on the supplemental report and  
 17 whether or not to move forward are things that,  
 18 frankly, we couldn't do as just between  
 19 Mr. Pincus and his legal advisors, and we  
 11:49AM 20 needed their input to do that.

11:49AM 21 We are mindful not to take material steps  
 22 to move forward with, as that term the used in  
 23 the sale procedures order, without getting  
 24 further guidance from the Court, but simply  
 11:50AM 25 preparing the supplemental report, being

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1 informed, thinking about all of the issues that  
 2 would go along with whether or not to move  
 3 forward with the preparation launch date and  
 4 the launch date itself is something that we  
 5 felt we very much needed Evercore's guidance on  
 6 so we have done that.

7 You know, again, the key piece for us, I  
 8 think, is really the U.S. government guidance  
 9 on -- and, you know, we're looking forward,  
 10 certainly, to learning what that is. I think  
 11 having this additional time to look at that  
 12 guidance, weigh in on -- with our thoughts and,  
 13 frankly, also have some dialogue with the sale  
 14 process parties, it's going to be in  
 15 everybody's interest so that we're best  
 16 informed about putting recommendations in front  
 17 of the Court. It's really all about, for us at  
 18 this point, the preparation of the supplemental  
 19 report, and we'll continue to work with the  
 20 parties.

21 THE COURT: Okay. I'll just put this  
 22 out there. As you may know, I'm having a  
 23 status conference later today with several  
 24 other creditors, and, of course, all of you are  
 25 welcome to be there if you like. And I don't

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1 want to get into any real substantive  
 2 discussion because they're at least not here  
 3 officially at the moment, but one issue that is  
 4 front and center in their status report is the  
 5 question of whether additional judgments will  
 6 be added. Is that an issue that you would  
 7 expect to address in your supplemental report,  
 8 or have you started thinking about when and how  
 9 the special master may like that issue  
 10 addressed, or is this just completely  
 11 premature, from your perspective?

12 MR. SCHROCK: Your Honor, I do  
 13 believe we have that process laid out in the  
 14 sales procedures order, that we would have to  
 15 designate what those additional judgments are  
 16 not later than close to the launch date. I  
 17 think, certainly, understanding how much is at  
 18 issue, it does bear on how much in judgments.  
 19 It could bear on some of the recommendations  
 20 that we make. For instance, if there's a  
 21 dollar of judgments versus 6 or 8 billion, it's  
 22 going to weigh in on the types of  
 23 recommendations that we would make moving  
 24 forward. So knowing -- getting clarity on  
 25 that, I think, is helpful for all parties. And

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1 I do know Your Honor has issued additional  
 2 writs of attachment on a number of additional  
 3 judgments, and we've been keeping track. I  
 4 think that whenever Your Honor is prepared to  
 5 act on that, we'll be ready, but we do have  
 6 this outlined as kind of a drop-dead date in  
 7 the Court's process.

8 THE COURT: Is there anything else  
 9 you wanted to raise at this time?

10 MR. SCHROCK: Nothing else, Your  
 11 Honor.

12 THE COURT: Okay. All right.

13 Mr. Estrada, why don't you come up next  
 14 in the nature of a status report, if there is  
 15 anything you want to report or raise with the  
 16 Court.

17 MR. ESTRADA: I don't think we have  
 18 anything, Your Honor, in substance about this.  
 19 I think we're looking forward to what the  
 20 report will be now in late April, and as was  
 21 our position all along, we have always thought  
 22 that we should get going with it. We have a  
 23 position with respect to the sales parties and  
 24 all of that, which I think is based on my  
 25 understanding as to what the purpose of that

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1 provision is, which I'm happy to give you now  
 2 or later if you like.

3 But it seems to me that for purposes of a  
 4 judicial execution sale, if one were to go  
 5 forward, people who have a claim to participate  
 6 in the process should be those that have an  
 7 attachment. We have an attachment. Nobody  
 8 else does. Your Honor has issued a number of  
 9 orders that are labeled conditional attachment  
 10 I think are legally, in fact, issuing tickets  
 11 for people for a place in line should  
 12 attachments ever be permitted again. And at  
 13 least as I see it, if there is a judicial sale  
 14 and there is more than is needed to pay our  
 15 judgment, there will be a leftover. And in  
 16 ordinary circumstances, people may seek to  
 17 attach that or it would go to the debtor.

18 It would not ordinarily be the case that  
 19 people who have no attachments are, in effect,  
 20 general creditors of the debtor of whom, for  
 21 all we know, there might be millions around the  
 22 world. All get to share on whatever is  
 23 leftover. It's not really a fight, but it does  
 24 seem to me in terms of keeping the process  
 25 manageable and whether you're going to add the

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11:55AM

1 sales process parties, I think it is mindful  
 2 that it is a judicial sale of attached assets  
 3 and that people who might have a claim to the  
 4 remainder, as it were, should be those who have  
 5 a property right that is secondary to ours and  
 6 rather than simply being a general creditor who  
 7 may some time get an attachment I can give  
 8 someone.

11:55AM

9 And I say that not because, necessarily,  
 10 it bears on the pecuniary interest of my client  
 11 because we're first in place but merely because  
 12 it may bear on the manageability of the process  
 13 if people get added who actually have no  
 14 attachment and no property right but who want  
 15 to have a voice in process. And we saw that  
 16 and we have some of our objections when we  
 17 dealt with recent motions to intervene, and  
 18 that has been part of our concern, that we keep  
 19 the process manageable for the execution of  
 20 judgment that we've been fighting all these  
 21 years. That's my view on that.

11:56AM

22 THE COURT: Okay. Thank you.

23

I'm going to let any other creditors  
 24 speaks and then we'll turn to the Venezuela  
 25 parties.

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11:56AM

1 MS. WOLF: Amy Wolf on behalf of  
 2 ConocoPhillips.

11:57AM

3 Your Honor, I think the likelihood that  
 4 Mr. Estrada's client will see this asset sold  
 5 and proceeds to go to Crystallex before OFAC  
 6 has addressed ConocoPhillips' longstanding  
 7 request to be able to attach -- ConocoPhillips  
 8 is the only creditor here which is actually a  
 9 creditor of PDVSA. We are a general creditor,  
 10 and we've been in this process. We're paying  
 11 for this process. We would like to be added  
 12 sooner rather than later just for clarity.

11:57AM

13 If the Court the going to consider adding  
 14 other additional judgments, I do think  
 15 ConocoPhillips stands in a somewhat different  
 16 position. It received the first conditional  
 17 writ and is a PDVSA creditor directly. But if  
 18 other parties who are receiving alter ego  
 19 judgments are going to be added as additional  
 20 judgment creditors, we might need to think  
 21 about how the Court is going to rank what is  
 22 now becoming a very significant number of very  
 23 substantial claims. So that's our one  
 24 suggestion, first of all, to deal with who is  
 25 going to be in the judicial judgment and

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1 ConocoPhillips thinks it should be the first of  
 2 those and then how it would deal be priority  
 3 ranking termed among those creditors.

4 THE COURT: Thank you.

5 MR. ELLIS: Thank you. Justin Ellis,  
 6 MoloLamken for Red Tree Investments.

7 I'm mindful, of course, that Your Honor  
 8 has denied our request to intervene. We, of

9 course, respectfully disagree with that and  
 10 have taken appeal to the Third Circuit. We  
 11 will see what the court of appeals says, but we  
 12 also understand in your order denying  
 13 intervention you still reiterated that we would  
 14 be free to offer input in your suggestions, and  
 15 we're offering a few points in that spirit.

16 First, I do understand from Mr. Schrock  
 17 that the United States will provide its views  
 18 as to the applicability of sanctions here and  
 19 provide that guidance by the 7th of April and  
 20 that he will then provide his supplemental  
 21 report, if possible, by the 30th. We would  
 22 just ask if possible that we would have access  
 23 to that letter and have some opportunity to  
 24 participate in that discussion with the special  
 25 master and the sale process parties if we

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1 could.

2 THE COURT: To the extent you're  
 3 asking for -- let me ask Mr. Schrock.

4 I suppose I just assumed that the  
 5 supplemental report would be filed on the  
 6 docket. Is that what you would anticipate?

7 MR. SCHROCK: Yes, Your Honor.

8 THE COURT: Thank you.

9 So you're going to have access to the  
 10 supplemental report just as everyone will. To  
 11 the extent you're asking for something further,  
 12 and it sounds like the intervention that I  
 13 denied, you're free to call up Mr. Schrock any  
 14 time you want, but I'm certainly not here to  
 15 grant the motion with all the rights that would  
 16 attach to it that I've already denied.

17 MR. ELLIS: Understood, Your Honor,  
 18 and we have been in consultation with the  
 19 special master and will continue to do so.

20 I'd also like to make a point about the  
 21 launch process. We generally agree that the  
 22 launch that the sales process should move  
 23 forward as far as it can in accordance with  
 24 applicable sanctions. We think there are steps  
 25 that the Court and special master could take

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1 that are not going to be a transfer of property  
 2 in a meaningful sense and would be broadly  
 3 supportive of that.

4 In that vein, we do think it would be  
 5 appropriate to try to sort out when we can  
 6 which judgments are going to be additional  
 7 judgments. I know briefly Mr. Estrada  
 8 suggested that what judgments should be  
 9 additional judgments is a matter of property  
 10 law. We don't think that's correct. We note  
 11 that the sales procedure order simply says it  
 12 will be decided in accordance with applicable  
 13 law, and we look forward to briefing that  
 14 issue.

15 Finally, I note on the priority issue,  
 16 because Ms. Wolf raised it, certainly that will  
 17 be an important issue. Given the number of  
 18 creditors that are going to come in the door  
 19 and already have on an alter ego basis, I would  
 20 be concerned at this point. It may be in the  
 21 nature of an advisory opinion to try to sort  
 22 out priority which people have objected  
 23 strenuously on the precise number of judgments  
 24 we may have and which judgments may be  
 25 enforceable is still an open question, but,

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1 again, we can address that at an appropriate  
 2 time.

3 THE COURT: Anybody other than the  
 4 Venezuela parties in the room that wants to be  
 5 heard in the nature of status?

6 Okay. I don't see anybody. So we'll  
 7 hear now from Mr. Eimer.

8 MR. EIMER: Nate Eimer for the  
 9 Venezuela parties.

10 I'm not sure, Your Honor, who's going to  
 11 be more surprised, Your Honor or Mr. Estrada,  
 12 when I say that I pretty much agree with  
 13 Mr. Estrada's view on these conditional  
 14 attachments. This is a judicial sale. We're  
 15 inevitably going to need briefing on these  
 16 issues, I think. This is a judicial sale under  
 17 324. There's only one attachment that's  
 18 recognized by law. The Court has authority  
 19 only to sell property to satisfies the judgment  
 20 that resulted in the attachment. And it makes  
 21 a huge difference. According to Bloomberg,  
 22 Citgo was valued last week at \$13-some billion  
 23 dollars. Section 324 only allows the Court to  
 24 sell sufficient assets to satisfy their  
 25 \$1 billion, \$900 million attachment. That's

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1 it. You can't sell the whole company to  
 2 satisfy 10 percent or 8 percent of the value of  
 3 the company. That would be a significant  
 4 discussion. I assume we're going to need  
 5 briefing on this issue, and it will probably  
 6 come up this afternoon in the same way, but  
 7 that's our argument on that.

8 I did want to comment on one other thing,  
 9 unless Your Honor has a question to me about  
 10 that.

11 THE COURT: No. My only question is  
 12 going to be do you have other things you want  
 13 to talk about.

14 MR. EIMER: Just one other. I think  
 15 there's a gap in the authorization papers, and  
 16 I mentioned this to Mr. Schrock. When he said  
 17 that the special master was activating  
 18 Evercore, the Evercore agreement only allows  
 19 them to be paid once the sales process was  
 20 launched and they get a monthly allowance.  
 21 There is no provision to pay them now because  
 22 the sales process is not launched, at least  
 23 that's the way we understand it. So I'm fine  
 24 to have Evercore working without compensation.

25 I doubt if they want to. They're probably more

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1 expensive than Mr. Estrada, but I think there  
 2 needs to be some provision if they expect to  
 3 get paid because there is none now. I don't  
 4 think it's appropriate, given the fee  
 5 arrangement that the Court approved, which  
 6 doesn't allow the monthly compensation they're  
 7 entitled to once the launch happens to start  
 8 before that point. So I just wanted to clarify  
 9 that.

10 THE COURT: Thank you for flagging  
 11 that.

12 Mr. Schrock, I don't know if you had a  
 13 chance to think about that or represent whether  
 14 they're willing to work for free or where we  
 15 are.

16 MR. SCHROCK: Thanks, Your Honor.  
 17 So, yes, we did see Mr. Eimer's latest  
 18 correspondence to us in another objection to  
 19 fees relating to Evercore. I believe that the  
 20 Evercore letter -- certainly, whatever  
 21 objections he has to Evercore being paid, we'll  
 22 deal with. I don't think there is a gap in the  
 23 engagement letter or the Court's order. Once  
 24 we notify parties that we're making  
 25 preparations -- and certainly we are -- for the

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1 supplemental report, the sales procedures order  
 2 contemplates that we may weigh in on certain  
 3 issues relating to whether or not to launch the  
 4 process, how -- we're certainly interested to  
 5 know, for instance, about the market, you know,  
 6 thoughts that, you know, would be within the  
 7 purview of an investment banking professional  
 8 related to that process. We're not taking  
 9 material steps, but we certainly are taking  
 10 preparations. We think we are complying with  
 11 the letter of Evercore's engagement, if they  
 12 have an objection on that.

13 I don't think Evercore is planning on  
 14 incurring monthly fees. I think they were  
 15 planning on being paid monthly fees, and that's  
 16 certainly our expectation that while they're  
 17 activated and working, they're going to get  
 18 paid a monthly fee. Of course, to remind  
 19 everybody, we can certainly deactivate Evercore  
 20 as well, and there's a process for doing that  
 21 if we're not moving forward with the process,  
 22 but we saw this, as for the moment, making the  
 23 supplemental report.

24 THE COURT: If I understand  
 25 correctly, your view is that you're already

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1 authorized to have them incur the monthly  
 2 expenses.

3 MR. SCHROCK: Once we give notice,  
 4 yes, Your Honor.

5 THE COURT: You've given notice, I  
 6 think you've told us.

7 MR. SCHROCK: Yes.

8 THE COURT: They're expecting to get  
 9 paid on that monthly rate.

10 MR. SCHROCK: Correct.

11 THE COURT: But presumably, and I  
 12 guess confirm this, if your recommendation is  
 13 not to go forward and/or I decide not to go  
 14 forward, you will deactivate them and then they  
 15 stop incurring any fees.

16 MR. SCHROCK: That's correct, Your  
 17 Honor.

18 THE COURT: Thank you for making  
 19 clear that position. Sounds like you had a  
 20 different position. I'm not going to be  
 21 prepared to probably resolve it now if you want  
 22 to say any more you can.

23 MR. EIMER: I think our understanding  
 24 of the fee agreement is different. I'm not  
 25 saying they shouldn't get paid. I don't think

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12:05PM 1 there's an authorization to pay them. I don't  
 2 think their monthly fees should start at this  
 3 point. I don't think we want to pay for that.  
 4 If they're working for a few hours, they should  
 5 get paid. I agree with that.

12:07PM 6 THE COURT: I suggest you all  
 7 continue to confer on this and, obviously,  
 8 include Evercore. If you don't, I anticipate I  
 9 may get one of the materially different  
 10 objections the next time I see a bill.

11 MR. SCHROCK: Ray Schrock for the  
 12 special master.

13 We're happy to confer on it.  
 14 Respectfully, my experience on trying to  
 15 resolve fee issues with the Venezuela parties  
 16 doesn't result in an agreement, but we need  
 17 Evercore for the supplemental report. We've  
 18 activated them. We want them to be paid. If  
 19 Venezuela -- if the Venezuela parties have an  
 20 objection to that or we need to clarify it,  
 21 we'll certainly do that.

22 THE COURT: Okay. Thank you. I will  
 23 tell you what my plan is and give you all a  
 24 chance to weigh in with anything further if you  
 25 want to. I have another hearing at 1:00 and

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1 then the status conference at 2:30. I may be  
 2 able to rule on the motion to disqualify later  
 3 today, but I'm going to need time to think  
 4 about what I heard and to gather my thoughts,  
 5 so I'm going to reconvene this Crystallex sales  
 6 process parties proceeding at 3:30 today. If  
 7 folks can't stay, that's fine, just to have at  
 8 least one of you for each party, please, to be  
 9 here. I don't anticipate anymore argument or  
 10 questions. I anticipate giving you a ruling or  
 11 telling you I don't have a ruling, but that  
 12 will be at 3:30 today.

13 In light of that, anything else? I'll  
 14 run through you all one more time.  
 15 Mr. Schrock, anything further?

16 MR. SCHROCK: Nothing further. Thank  
 17 you.

18 THE COURT: Mr. Estrada?  
 19 MR. ESTRADA: Nothing further at this  
 20 time, Your Honor.

21 THE COURT: Ms. Wolf?  
 22 MS. WOLF: No, Your Honor, thank you.

23 THE COURT: Anybody else over here?  
 24 Mr. Eimer?

25 MR. EIMER: No, Your Honor.

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12:09PM

1 THE COURT: Mr. Verrilli, anything  
 2 else?  
 3 MR. VERRILLI: No, Your Honor.  
 4 THE COURT: Thank you all very much.  
 5 (A recess was taken, after which the  
 6 following proceedings were had:)  
 7 THE COURT: We're back here in the  
 8 Crystallex action, and in an abundance of  
 9 caution, I want to make sure you put your  
 10 appearances on the record to make sure you're  
 11 all present.

12 MR. MOYER: Good afternoon, Your  
 13 Honor. Jeff Moyer from Richards, Layton, and  
 14 Finger on behalf of Crystallex, and I'm joined  
 15 this afternoon by Miguel Estrada from Gibson  
 16 Dunn.

17 THE COURT: Thank you.  
 18 MR. SCHNEIDER: Good afternoon, Your  
 19 Honor. Abraham Schneider from Potter,  
 20 Anderson, and Caroon on behalf of Special  
 21 Master Pincus. With us again is Ray Schrock  
 22 and Chase Bentley from Weil Gotshal.

23 THE COURT: Okay.  
 24 MR. SCHROCK: Good afternoon.  
 03:35PM 25 MS. CUMINGS: Hello again, Your

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1 Honor. Ali Cumings of Morris Nichols on behalf  
 2 of PDV Holdings and Citgo, and with me is Nate  
 3 Eimer from Eimer Stahl.

4 THE COURT: Good afternoon.  
 03:36PM 5 MR. HIRZEL: Good late afternoon,  
 6 Your Honor. Sam Hirzel from Heyman Enerio.  
 7 With me in the courtroom are Juan Perla, Kevin  
 8 Meehan, and Aubre Dean from the Curtis Mallet  
 9 firm.

03:36PM 10 MR. MORITZ: Good afternoon, Your  
 11 Honor. Garrett Moritz from Ross Aronstam on  
 12 behalf of ConocoPhillips, and I'm joined in the  
 13 courtroom by from Wachtell Lipton Amy Wolf,  
 14 Ricky Mason, and Michael Cassell and also from  
 03:36PM 15 Kobre and Kim, Marcus Green.

16 THE COURT: All right. Good  
 17 afternoon again to all of you. Thank you all  
 18 for sticking around and returning. It's late  
 19 afternoon. I am going to give you my ruling on  
 20 the pending motion to disqualify, and it will  
 21 be somewhat later in the afternoon by the time  
 22 I'm done telling you my reasoning. I have a  
 23 little bit to say to explain, but let me get to  
 24 it.

03:37PM 25 I will add, as I think I did this  
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03:37PM

1 morning, the argument was extremely helpful and  
 2 I was very pleased to have it. I had a lot of  
 3 questions that were all very thoroughly  
 4 answered, which has helped me get to this point  
 5 where I can rule on the motion.

6 The motion, again, is the Venezuela  
 7 parties' motion to disqualify the special  
 8 master. For the reasons I will explain at some  
 9 length, the motion is denied.

03:37PM 10 First, as all parties recognize in their  
 11 extensive briefing, the motion is largely a  
 12 rehash of the Venezuela parties' motion to be  
 13 included in the special master's January 12th  
 14 meeting with OFAC, a motion I denied, and I  
 15 should say I will refer to that as the OFAC  
 16 meeting or January 12th meeting, even though we  
 17 learned today that OFAC was apparently not  
 18 present at the meeting.

19 My denial of the motion for  
 03:37PM 20 disqualification today is based on,  
 21 essentially, the same reasoning that I gave in  
 22 denying the meeting-related motion, but I do  
 23 want to expound on that reasoning. The first  
 24 basis for denying the motion is that the burden  
 03:38PM 25 to prevail on it is on the moving party to show

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1 bias or some other reason for disqualification,  
 2 and it is a substantial burden, and the  
 3 Venezuela parties simply have not met it.

4 There is no evidence before the Court that the  
 03:38PM 5 special master engaged in advocacy in the OFAC  
 6 meeting. There's no evidence, in particular,  
 7 that he advocated for a change in U.S. foreign  
 8 policy or advocated for Crystallex to be  
 9 granted a license.

03:38PM 10 So one, but not the sole, ground on which  
 11 I'm denying the motion is the failure of proof  
 12 by the Venezuela parties. In my mind, that is  
 13 a denial on the merits, and I will have a  
 14 little more to say on the merits, but I now  
 03:38PM 15 want to say something about some of the  
 16 procedural bases on which I'm denying the  
 17 motion as well.

18 The first one is that to motion to  
 19 disqualify, in my view, is untimely. This is a  
 03:39PM 20 basis to deny the motion on all the grounds on  
 21 which it is asserted; that is, section 455(a),  
 22 Section 455(b), Canons 2 and 3 of the Code of  
 23 Judicial Conduct, and the due process clause of  
 24 the Fifth Amendment.

03:39PM 25 I don't think it's disputed that there is

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1 a timeliness requirement for filing such a  
 2 motion. The Third Circuit said as much in  
 3 common *Kensington*. Parties seeking  
 4 disqualification in Section 455(a) should do so  
 5 in a timely manner. And then in a case called  
 6 *Stonehenge Properties*, the Third Circuit also  
 7 noted that there is a timeliness requirement  
 8 for a disqualification motion under section  
 9 455(b).

03:39PM 10 Here the motion is untimely because the  
 11 grounds for it were known to the moving parties  
 12 for at least many months prior to the filing of  
 13 their motion. A good summary of the relevant  
 14 timeline showing that all the parties have  
 15 known since approximately May of 2021 that the  
 16 special master had engaged OFAC counsel and was  
 17 in ex parte communication with OFAC is set out  
 18 in Crystallex's response to the motion, DI 513  
 19 at pages 3 to 5. The ex parte meetings,  
 20 including what the Venezuela parties now refer  
 21 to as advocacy, to the extent those are two  
 22 different grounds for the motion, ex parte  
 23 meetings and advocacy, both of these things, as  
 24 properly understood, were contemplated  
 25 throughout the process of negotiating and

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1 six-month window and during the six-month  
 2 window, the special master will be directed to  
 3 use his best efforts to obtain guidance from  
 4 OFAC, making no mention that such meetings  
 5 would be anything other than ex parte, as all  
 6 such meetings up to that point had been.

7 I then entered the sale procedure order  
 8 on October 2022 and expressly contemplated the  
 9 special master proactively engaging with OFAC  
 10 and included that six-month window. "Within  
 11 six months" -- I'm adding some words to the  
 12 quote -- "he shall solicit and attempt to gain  
 13 clarity and guidance from OFAC in support for  
 14 or not -- of its support for or not opposition  
 15 to the launch of the marketing process." You  
 16 can see these provisions at DI 481, Exhibit 1,  
 17 paragraphs 3 and 4.

18 In the status report of October 4, 2022,  
 19 the special master confirmed he does not intend  
 20 to include the Venezuela parties at such a  
 21 meeting. That's DI 480 at two, note two.  
 22 There's no indication anywhere in the sale  
 23 procedure order that the special master's  
 24 communications with OFAC needed to include any  
 25 other parties, and there was no reason for any

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 1 litigating the sales procedures order, which  
 2 was adopted in October 2022. And this gave  
 3 rise to the notice, actual notice, to the  
 4 moving parties that the concerns they belatedly  
 5 raised could and should have been raised much  
 6 sooner.

7 So for example, the special master met  
 8 with OFAC ex parte three times in the summer of  
 9 2021. There's support for that at DI 348  
 10 paragraphs 39 and 40. On November 8, 2021, we  
 11 had, I think, a hearing that was longer than  
 12 today's hearing, and among other things we  
 13 discussed that the special master would  
 14 communicate with OFAC ex parte, as he  
 15 previously had done. There was no reference to  
 16 potential disqualification of the special  
 17 master or grounds for seeking his  
 18 disqualification, even though also on the  
 19 agenda that day was a motion to disqualify one  
 20 of the advisors to the special master. The  
 21 transcript of that ruling -- or I'm sorry that  
 22 whole proceeding, I think, is at DI 409.

23 In my March 2022 opinion, DI 443  
 24 particularly at page 17, I noted that the sale  
 25 procedure order I would adopt would include a

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 1 sales process party to believe that they would  
 2 be involved or invited to attend the meeting.

3 Let me say something about advocacy. I  
 4 think when the special master used this word in  
 5 this context, I think he meant, as his counsel  
 6 explained today, that he conveyed to OFAC his  
 7 view that in order to conduct a  
 8 value-maximizing transaction, which in his view  
 9 is in the interest of all parties, he, the

10 special master, and ultimately the Court needs  
 11 clarity from the U.S. government as to whether  
 12 it will or will not or may exercise its sole  
 13 authority at the end of the process to grant a  
 14 specific license, a license which will be  
 15 required under the current sanctions regime  
 16 before a sale transaction can be consummated.  
 17 That's what I think he meant by "advocacy."

18 I don't think "advocacy" is really the  
 19 right word for that, but whatever word he used,  
 20 the moving parties have not proven that it was  
 21 materially different than the types of things  
 22 the special master did at the earlier ex parte  
 23 meetings with OFAC, nor have the moving parties  
 24 persuaded me that there's anything wrong with  
 25 what the special master did, whether we call it

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1 advocacy or something else. Which, by the way,  
 2 everything he did, he did at my express  
 3 direction. I think it's important to keep in  
 4 mind the context here.

03:45PM 5 As Crystallex emphasized in argument  
 6 today, while we do have certain views of the  
 7 United States government on what's going on in  
 8 this process, they're somewhat outdated, and  
 9 they're expressly time bound. So in July 2020,  
 10 we received the statement of interest on behalf  
 11 of the United States government stating a  
 12 preference that the Court halt the prefatory  
 13 steps it was taking towards the sale. As is  
 14 entirely understandable and reasonable, that  
 15 position was the position of the United States  
 16 government, quote, at that time. It may well  
 17 still be the position of the United States  
 18 government, but in my view, there's absolutely  
 19 nothing improper about inquiring as to whether  
 20 it's still their view. It's not advocacy.

21 There's nothing improper about it.

22 Similarly, the denial without prejudice  
 23 that Crystallex requests for a specific license  
 24 was based on, as it had to be, circumstances at  
 25 that time, and I believe the letter expressly

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1 notes that it's a denial without prejudice to  
 2 ask again and a denial at this time or at that  
 3 time.

03:46PM 4 The government's position could change at  
 5 any time, and, very importantly, this is  
 6 another important part of the context I think I  
 7 made repeatedly clear, I entirely respect and  
 8 understand that unless the current sanctions  
 9 regime is changed, it will be for the executive  
 10 branch and only the executive branch to  
 11 ultimately decide whether to grant the license  
 12 or licenses necessary for a sales transaction  
 13 to be completed and for the Court's judgment to  
 14 eventually be enforced. That is up to them.  
 15 Nothing a special master says or anything I say  
 16 or do will change that. And I think everything  
 17 that the special master does or says or has  
 18 done or said has to be understood in that  
 19 context.

03:47PM 20 We well understand and respect that the  
 21 last call, ultimately, will be for the  
 22 executive branch and so, of course, nothing he  
 23 says and nothing I say will be intended to try  
 24 to suggest anything to the contrary. There is  
 25 no evidence that the special master engaged in

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1 the type of advocacy the moving parties contend  
 2 would be inappropriate, and because of that, I  
 3 need not resolve today the dispute which -- I  
 4 think there is a dispute in the room as to  
 5 whether it would be inappropriate for the  
 6 special master to have engaged in the kinds of  
 7 advocacy that were alleged. At least  
 8 Crystallex, I think, argues that it would not  
 9 be. I don't need to decide that dispute today.  
 10 There's no evidence that he did anything that  
 11 would be improper.

12 So that was a lengthy side note on what  
 13 are we talking about when we say "advocacy,"  
 14 but I still am trying to articulate why I think  
 15 the motion to disqualify the special master was  
 16 untimely. And the first point for that is I do  
 17 think everything that occurred since at least  
 18 May of 2021 is relevant to understanding the  
 19 timing.

03:48PM 20 But I now want to say in the alternative,  
 21 if you wipe all of that away and only look at  
 22 what happened from December 28, 2022, to the  
 23 filing of the motion in front of me today on  
 24 January 23, 2023, if you only look at that time  
 25 frame, I still think the motion, as an

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1 alternative basis for my ruling, is untimely  
 2 and sufficiently untimely that it is denied on  
 3 that basis as well. I do view the facts of  
 4 what happened in late December and early  
 5 January of this year as, essentially,  
 6 undisputed at this point. By December 28th of  
 7 last year, the Venezuela parties knew that the  
 8 special master would meet with OFAC sometime in  
 9 January and knew that the special master had  
 10 not coordinated with them, asked about their  
 11 schedule, to figure out what day in January  
 12 they should meet.

13 As best as the record can tell, you  
 14 didn't even contact them about setting up the  
 15 meeting with OFAC, and so by December 28th,  
 16 particularly given the pattern of the special  
 17 master's meetings with OFAC being ex parte and  
 18 the sale procedures order not doing anything to  
 19 change that, I think by December 28th, the  
 20 Venezuela parties had actual knowledge that  
 21 there would be a meeting in January and it

22 would be ex parte between the special master  
 23 and the Venezuela parties. If the Venezuela  
 24 parties really believed that that was going to  
 25 be grounds, ultimately, for disqualification of

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03:50PM 1 the special master, a special master on whom,  
 2 as we've heard today, they spent a lot of money  
 3 on and I, of course, spent a lot of time giving  
 4 assignments to and having vested my authority  
 5 in, if they really thought that was going to be  
 6 meritorious grounds for disqualifying the  
 7 special master, I think that's an emergency  
 8 that requires contacting the Court or doing  
 9 your level best to contact the Court within a  
 10 day, two days maybe, three days at most.

11 I'm not saying that you necessarily have  
 12 to have fully coordinated amongst all  
 13 yourselves and have written a nice brief, but  
 14 if you think you're in good faith sitting on an  
 15 issue that could mandatorily require me to  
 16 disqualify the special master, I don't think  
 17 you can wait from December 28th until  
 18 January 9th without even contacting the Court  
 19 and giving it a hint that there is this kind of  
 20 emergency.

21 Of course, at that point, January was  
 22 undefined. There was no specific date, or at  
 23 least the parties had no knowledge at that  
 24 point as to January and January 12th, so could  
 25 have meant presumably not January 1st but maybe

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1 January 3rd. I just don't think you can sit on  
 2 that kind of an issue for that many days  
 3 without even contacting the Court.

4 Time went on. On December 30th, the  
 5 special master let the Venezuela parties know a  
 6 meeting was scheduled for January 12th  
 7 specifically. Again, they knew or absolutely  
 8 should have known, based on the pattern and  
 9 practice and sale procedures order, that that  
 10 meeting would be ex parte, and that was  
 11 expressly confirmed on January 3rd, and it was  
 12 also on January 3rd, evidently, that the first  
 13 use of the word "advocate" came up, although I  
 14 think that should have been understood from at  
 15 least December 28th, if not well before that.

16 Anyway, even if -- and I don't think this  
 17 is the best way to see it -- even if the clock  
 18 started ticking only on January 3rd, you can't  
 19 wait from January 3rd until January 9th to  
 20 contact the Court if you want to seek relief  
 21 that becomes moot on January 11th or the  
 22 morning of January 12th, particularly when the  
 23 stakes are this high and this much money has  
 24 been spent on the special master, this much  
 25 litigation has gone into directing the special

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1 master what to do.

2 At best for the Venezuela parties, they  
 3 knew a meeting was scheduled to occur 13 --  
 4 they knew for 13 days and they let 10 of those  
 5 days lapse before contacting the Court or  
 6 seeking any relief. They took up 10 of  
 7 13 days, which by my calculation is 77 percent  
 8 of the potential time I had to hear about the  
 9 dispute, get briefing on it, review the  
 10 briefing, analyze the issue, make a decision,  
 11 and articulate the decision.

12 I recognize there's not a lot of case  
 13 law, if any, that says waiting a matter of days  
 14 makes a motion to disqualify untimely, but I do  
 15 think the circumstances here are, perhaps,  
 16 unique and extreme enough that the pace at  
 17 which the Venezuela parties moved, even if I  
 18 don't start the clock until December 28th, was  
 19 simply too slow, and I would say substantially  
 20 too slow. I certainly don't believe that the  
 21 Venezuela parties moved as swiftly as was  
 22 reasonably practical. And I do think in this  
 23 context, the delay was substantial, as the  
 24 Third Circuit cases require for all the reasons  
 25 I've just explained.

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1 And I also have reluctantly concluded  
 2 that the delay was strategic; that is, I think  
 3 the way the Venezuela parties have handled the  
 4 issues relating to the OFAC meeting, the relief  
 5 that they've sought, first with respect to the  
 6 meeting itself and now to disqualify the  
 7 special master, I do believe it has a -- at  
 8 least a substantial element of being tactical  
 9 and designed with at least a partial goal of  
 10 further delaying these proceedings.

11 As Mr. Estrada observed this morning --  
 12 and I've had occasion to go back, of course,  
 13 and review the briefing again on the original  
 14 motion directed to the January 12th meeting --  
 15 the argument that after the meeting the special  
 16 master must mandatorily be disqualified because  
 17 he is in possession of some otherwise  
 18 undisclosed information, factual information on  
 19 a disputed issue, is at best -- and being  
 20 generous to the Venezuela parties -- at best  
 21 hinted at in the briefing on the first motion.  
 22 There's no explicit reference to Section  
 23 455(b)(1), which is one of the significant  
 24 bases for the disqualification motion.  
 25 And I think no persuasive basis has been

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03:56PM 1 given for why the moving parties did not make a  
 2 455(b)(1) argument in their efforts to modify  
 3 the meeting parameters, which leads me, again,  
 4 reluctantly, to the conclusion that at least  
 5 part of their motivation was to hold an  
 6 argument in reserve to throw at the Court weeks  
 7 after the meeting as a potential basis to  
 8 compel the Court to disqualify his special  
 9 master.

03:56PM 10 And it probably goes without saying, but  
 11 if I disqualify the special master, it will set  
 12 back and further delay these already delayed  
 13 proceedings, perhaps by quite a lot, and so it  
 14 may also lead and it may also have led, had I  
 03:56PM 15 been persuaded to do that, to an argument that  
 16 I should be disqualified. And while I'm  
 17 confident other judges could effectively, of  
 18 course, preside over these actions, I have the  
 19 years of experience invested in it now, and it  
 03:57PM 20 would no doubt delay things substantially if we  
 21 needed to resign these matter to another judge.

22 So I think that all of that, that  
 23 potential to really substantially slow down  
 24 these proceedings even further by going after  
 03:57PM 25 the special master, potentially asking to

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03:59PM 1 had done repeatedly before, I find that that  
 2 also constitutes a waiver of their right to  
 3 seek disqualification of the special master  
 4 based on that meeting.

03:59PM 5 Further, just a little bit more on why  
 6 the motion fails on the merits. If the timing  
 7 argument and the waiver are not enough, I find  
 8 that as, I've already said, there's no  
 9 sufficient evidence to grant the motion. Let  
 03:59PM 10 me add to that. Specifically under 455(a), I  
 11 find the special master's and my impartiality  
 12 cannot be reasonably questioned. A reasonable  
 13 person with knowledge of all the facts would  
 14 not conclude that his or my impartiality might  
 03:59PM 15 be reasonably questioned. The Court has  
 16 authorized the ex parte meetings which the law  
 17 permits me to do. The special master's opening  
 18 brief opposing this motion at pages 9 to 11 and  
 19 the letter filed by ConocoPhillips, DI 522 at  
 04:00PM 20 pages 3 to 4, set out how Federal Rule of Civil  
 21 Procedure 53 and various cases applying that  
 22 rule approve of judges authorizing ex parte  
 23 communications by a special master with the  
 24 Court or a party. That's the express language  
 04:00PM 25 of Rule 53, and that language has been -- as

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 03:57PM 1 remove me, was at least part of what was going  
 2 on in the timing, the very, in my mind, unduly  
 3 delayed timing of these motions.  
 4 All of the reasons that the motion  
 03:57PM 5 directed to the meeting was untimely apply  
 6 equally, if not more so, to the motion to  
 7 disqualify, which, of course, was not filed  
 8 until January 23rd after the meeting. It is,  
 9 at least, as I say, as untimely as the motions  
 03:58PM 10 meeting itself. That's all I had to say about  
 11 timeliness.

12 As a further reason for denying -- for  
 13 granting -- as a further ground for denying the  
 14 motion to disqualify, I do believe that the  
 03:58PM 15 bases on which the Venezuela parties seek  
 16 disqualification of the special master are  
 17 waived. Really, the same analysis as to the  
 18 timeliness. Because the moving parties have no  
 19 evidence that the ex parte meeting on  
 20 January 12th was materially different than all  
 21 of the prior meetings given the course of how  
 22 we got to January 12th, I conclude that the  
 23 Venezuela parties' long-time acquiescence in  
 24 the special master's ex parte engagement with  
 03:58PM 25 OFAC, which was materially similar to what he

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 04:00PM 1 explained in those filings and in the cases  
 2 cited, that language has been interpreted to  
 3 include the Court's ability to authorize ex  
 4 parte communications with third parties.

04:00PM 5 I am persuaded that these authorities  
 6 make my order lawful and that the challenging  
 7 facts and circumstances I am confronting in  
 8 this case make my order reasonable and  
 9 necessary. There is nothing improper or  
 04:00PM 10 anything a reasonable person would think  
 11 improper in the special master assisting the  
 12 Court in its efforts to enforce judgments that  
 13 have been entered and affirmed, and no  
 14 reasonable person would think that there is  
 04:01PM 15 anything improper or giving rise to a  
 16 reasonable basis to question impartiality in  
 17 using the special master in this way and in him  
 18 following my direction to do so.

19 In addition to Rule 53, the Court does  
 04:01PM 20 have an inherent power to enforce its own  
 21 judgment and to issue orders as necessary to  
 22 make its judgments effective. That proposition  
 23 is supported in many places, but among others,  
 24 in the *Peacock* decision of the Supreme Court  
 04:01PM 25 516 U.S. at 356.

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1 As for the 455(b) grounds, the special  
 2 master does not, nor do I, have any personal  
 3 knowledge of disputed evidentiary facts  
 4 concerning the proceeding, which is what must  
 5 be shown and has not been shown for  
 6 disqualification under 455(b).

7 There is not and will not be any dispute  
 8 as to what OFAC's position is. We're not going  
 9 to litigate that. OFAC will tell us its  
 10 position or it won't tell us its position, and  
 11 we will all accept that is their position or  
 12 they're not going to tell us what their  
 13 position is. That's not the kind of issue.  
 14 It's not a factual dispute over an evidentiary  
 15 fact concerning this proceeding that the rule  
 16 is concerned with.

17 So for all of those reasons, my decision  
 18 is to deny the motion to disqualify. I will  
 19 give you a chance to tell me if you have any  
 20 questions about my rulings, but I want to say  
 21 one further thing before you do. I would like  
 22 to set up, though I do want to get your views  
 23 on this, I would like to set up a regular  
 24 meeting with the special master, ex parte  
 25 meeting for myself, perhaps on a monthly or

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1 every-two-month basis. I don't want them to be  
 2 secret meetings. I don't think there have been  
 3 any secret meetings, but I don't want there to  
 4 be any doubts that, you know, every month,  
 5 every two months, whatever it is, on a schedule  
 6 that I would propose be shared with the  
 7 parties, he and I and potentially his advisors  
 8 are going to meet.

9 I am open to suggestions that perhaps I  
 10 need to have a court reporter there to take  
 11 down a confidential record that would be sealed  
 12 until some further order, presumably from an  
 13 appellate court, saying this needs to be  
 14 unsealed. I would consider doing that. I  
 15 would consider doing either alternatively or in  
 16 addition that the special master gives you all  
 17 an agenda of what he plans to talk to me about  
 18 and maybe writes a short summary of what was  
 19 discussed, but I do think -- and this is not  
 20 meant to suggest that I already know we're  
 21 going forward. I don't know we're going  
 22 forward. I don't know what OFAC is going to  
 23 say. I don't know what the special master is  
 24 going to say. I don't know what positions  
 25 you're all going to take.

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1 But I can say it's challenging not  
 2 knowing when this case or these cases are going  
 3 to need my attention, and I know that's  
 4 inherent in litigation. You all don't probably  
 5 know either, but it will be helpful to me to  
 6 know that I have a sort of regular opportunity  
 7 to check in with the special master and  
 8 hopefully not be surprised by emergency motions  
 9 and things that really require my attention  
 10 when it may not be the most opportune time.  
 11 I'm going to give you all time to talk  
 12 amongst yourselves on that and get back to me  
 13 with your views on it, but that is something  
 14 I'm interested in setting up.

15 With that -- and I don't want anymore  
 16 argument. We had a lot of argument today. If  
 17 you have any questions about anything I said  
 18 and particularly my ruling, I'm happy to hear  
 19 it. Let me start with Mr. Schrock.

20 MR. SCHROCK: Thanks very much, Your  
 21 Honor. No questions.  
 22 THE COURT: Mr. Estrada?  
 23 MR. ESTRADA: No questions on your  
 24 ruling, Your Honor.  
 25 THE COURT: Ms. Wolf back there?

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1 MS. WOLF: None thank you.  
 2 THE COURT: Mr. Eimer?  
 3 MR. EIMER: None for us, Your Honor.  
 4 THE COURT: Anybody else?  
 5 So let's do this. Let me have the sales  
 6 process parties meet-and-confer and get me a  
 7 status report. Let's make it April 6th. It's  
 8 a week from today, I think. Perhaps a day  
 9 before, maybe we'll hear from OFAC, but the  
 10 only thing I for sure need you to put in the  
 11 status report is have you had a chance to talk  
 12 about my idea of a regular, recurring meeting  
 13 with the special master ex parte and do you  
 14 want any limitations or precautions on that.  
 15 Of course, you can add anything else you want,  
 16 but that's what I will be looking for.  
 17 Thank you. It's been an enjoyable day.  
 18 I appreciate all the help, and I will be in  
 19 recess.

20  
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 22  
 23  
 24  
 25

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1 C E R T I F I C A T E

2 STATE OF DELAWARE )

3 ) ss:

4 COUNTY OF NEW CASTLE )

5 I, Deanna L. Warner, a Certified  
6 Shorthand Reporter, do hereby certify that as  
7 such Certified Shorthand Reporter, I was  
8 present at and reported in Stenotype shorthand  
9 the above and foregoing proceedings in Case  
10 Number 17-151-LPS, *CRYSTALLEX INTERNATIONAL*  
11 *CORP. VS. BOLIVARIAN REPUBLIC OF VENEZUELA*,  
12 heard on March 30, 2023.

13 I further certify that a transcript of  
14 my shorthand notes was typed and that the  
15 foregoing transcript, consisting of 125  
16 typewritten pages, is a true copy of said

17 MOTION TO DISQUALIFY.  
18 SIGNED, OFFICIALLY SEALED, and FILED  
19 with the Clerk of the District Court, NEW  
20 CASTLE County, Delaware, this 31st day of  
March, 2023.

21  
22

23 Deanna L. Warner, CSR, #1687  
Speedbudget Enterprises, LLC



24  
25

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